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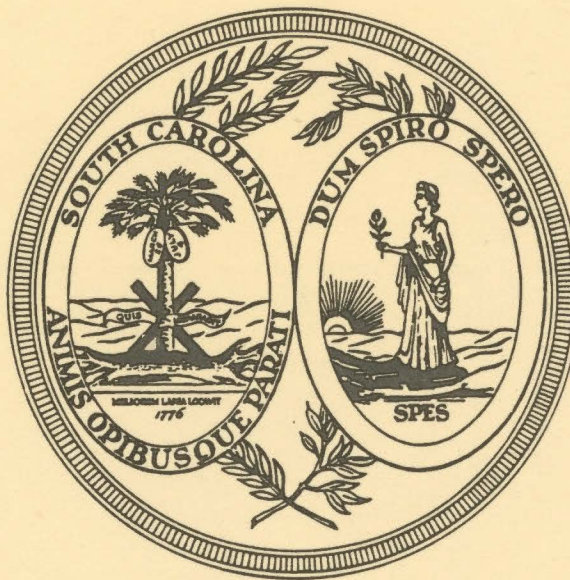
South Carolina Legislative Audit Council

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Report to the General Assembly

June 1989

1989 Sunset Reviews



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Report to the General Assembly

Board of Funeral Service

Board of Registration for Landscape Architecture

Board of Architectural Examiners

Board of Examiners for Registered Environmental
Sanitarians

Board of Social Work Examiners

Cemetery Board

Board for Barrier Free Design

Athletic Trainers' Advisory Committee

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Report Introduction

Pursuant to state law, the Legislative Audit Council has reviewed the laws and operations of eight South Carolina regulatory agencies. The agencies are the Board of Funeral Service, the Board of Registration for Landscape Architecture, the Board of Architectural Examiners, the Board of Examiners for Registered Environmental Sanitarians, the Board of Social Work Examiners, the Cemetery Board, the Board for Barrier Free Design, and the Athletic Trainers' Advisory Committee.

We reviewed agency activities which took place from FY 84-85 through FY 88-89, with emphasis on the last three fiscal years. The reviews were conducted and this report was prepared in accordance with generally accepted government auditing standards. The objectives of the reviews are established in state law and are as follows.

- (1) Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (2) Determine the economic, fiscal, and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (3) Determine the overall costs, including manpower, of the agency under review.
- (4) Evaluate the efficiency of the administration of the programs or functions of the agency under review.
- (5) Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.
- (6) Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

- (7) Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the administration of the agency under review have been processed.
- (8) Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

To conduct these reviews, the Audit Council interviewed South Carolina government officials, regulated professionals, private association officials, and related interest groups. We also analyzed financial and nonfinancial documents, South Carolina laws and regulations, and operational procedures. The United States Federal Trade Commission assisted us in reviewing state laws and regulations for anticompetitive restrictions. Finally, we compared regulatory practices in South Carolina to those in Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee, and Virginia.

Board of Funeral Service

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Introduction

After reviewing the laws and operations of the State Board of Funeral Service, the Legislative Audit Council concludes that the regulation of funeral directors, embalmers, and funeral establishments should be continued.

The Board provides a needed service to the public, however several opportunities for improvement were noted. These areas include testing, written administrative policies, and funeral directors who serve as coroners.

Background

In 1955, the General Assembly created the State Board of Funeral Service. The Board was empowered to license embalmers and funeral directors. Currently, 49 states plus the District of Columbia regulate the funeral industry.

The Board is composed of 11 members. Nine of these members are licensed funeral directors and embalmers. They may be nominated by the South Carolina Funeral Directors Association and the South Carolina Morticians Association. The two remaining members are not engaged in the funeral business. The Governor appoints all Board members.

State law restricts the practice of funeral directing and embalming to persons who have been licensed by the Board. The Board examines, licenses and disciplines funeral directors and embalmers. It also issues permits to and conducts inspections of funeral homes.

As of January 1989, 509 funeral directors, 44 embalmers, 420 funeral homes, and 11 crematories were licensed by the Board. In addition, Board records showed that 662 people held dual licenses as both funeral directors and embalmers.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Funeral Service has no direct control over prices charged to consumers. Examination and license fees are costs of regulation, but these costs are not likely to significantly affect price of goods and services. However, there are several restrictions on competition which could result in higher consumer prices. These restrictions are discussed below.

Limits on Competition

The Audit Council identified state laws and regulations which limit competition while providing questionable benefit to the public's health and welfare. This review was conducted with the assistance of the Bureau of Competition of the Federal Trade Commission (FTC) upon request of the Audit Council. Laws which limit competition can result in higher consumer prices.

Licensure by Reciprocity

Two parts of the South Carolina Code of Laws may be contradictory regarding out-of-state applications for funeral home director and embalmer licenses. Section 40-19-100(3) requires that out-of-state applicants be licensed in South Carolina if their state of origin has licensure requirements "substantially similar" to those in South Carolina. However, State Regulation 57-11 states:

South Carolina State Laws pertaining to the practice of embalmers and funeral directors does (sic) not recognize any form of reciprocal agreement with any other state or territory in the granting of licenses as funeral director nor the practice thereof.

By prohibiting reciprocal licensure agreements, this regulation may limit the effectiveness of §40-19-100(3) in reducing the number of steps required for licensure. FTC analysts noted that this prohibition of reciprocity may "insulate" the funeral professions from competition. Reciprocal licensure agreements between South Carolina and other states with "substantially similar" requirements would improve the efficiency of the application process without sacrificing competence or quality of service.

Recommendation

The Board of Funeral Service should repeal Regulation 57-11 which prohibits the establishment of reciprocal agreements with other states.

Apprenticeships

State law requires previously unlicensed individuals to graduate from a mortuary school and serve a two-year apprenticeship. The apprenticeship must be served in a South Carolina funeral home according to state law. This restriction, however, may be unnecessary. On a case-by-case basis, the Board could approve out-of-state apprenticeships which meet South Carolina standards. This would increase apprenticeship opportunities for potential licensees without affecting their quality of training. FTC analysts recommended removal of this restriction.

Recommendation

The General Assembly may wish to consider removing from state law the requirement that apprenticeships for funeral professions must be served in a South Carolina funeral home.

Parking Space Restriction

Section 40-19-230 of the South Carolina Code of Laws requires licensed funeral homes to provide at least 12 parking spaces (see also p. A-8). Seven southeastern states (Georgia, Alabama, Florida, Mississippi, North Carolina, Tennessee, and Virginia) do not regulate parking spaces. In addition, the Audit Council recommended in 1983 that this restriction be deleted.

This requirement raises the cost of entry into the profession because it requires more capital to start a business. In addition, parking is a matter that could be managed by local governments.

Recommendation

The General Assembly may wish to consider deleting from §40-19-230 of the South Carolina Code of Laws the requirement that funeral homes have a minimum number of parking spaces.

Other Issues

FTC analysts identified several other potential limits on competition. See January 23, 1989 FTC letter to the Audit Council on page App-1.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Funeral Service restricts funeral directing and embalming to persons with licenses to ensure that the public's health and economic interests are protected. The Board also conducts inspections of funeral home compliance with certain state regulations pertaining to unethical sales practices and unsanitary conditions.

Deregulation would eliminate entry requirements, including education and examination, which help ensure that funeral directors and embalmers are competent. It would eliminate a mechanism for handling consumer complaints. In addition, without the threat of losing licensure, there would be reduced accountability for funeral directors and embalmers. Therefore, the Audit Council recommends that the Board and regulation of the profession be continued.

Determine the overall costs, including manpower, of the agency under review.

The Board of Funeral Service collects revenue through examination and license fees (see Table 3A.1). From FY 84-85 through FY 87-88, the Board's expenditures increased from \$59,151 to \$66,033 while revenues increased from \$59,775 to \$79,815. In FY 87-88, the Board met an Appropriation Act requirement that revenues equal 115% of its appropriation.

The Board has two employees. The Board is headed by a part-time Executive Secretary and has a funeral home inspector who is a full-time employee. In FY 87-88, salaries and fringe benefits totaled \$41,718 comprising 63% of the Board's total expenditures.

Table 3A.1: Source of Revenues, Expenditures, and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
Funeral Home Permit	\$12,970	\$13,375	\$15,175	\$17,025	\$15,800
License Fees	37,640	35,043	38,565	52,630	57,195
Apprentice License	4,715	2,950	3,350	3,210	3,200
Exam Fees	4,450	7,710	6,150	6,950	6,000
Total	\$59,775	\$59,078	\$63,240	\$79,815	\$82,195
Expenditures:					
Personal Services	\$34,682	\$34,690	\$35,632	\$34,431	\$40,666
Other Operating Expenses	18,630	19,084	20,401	24,315	22,220
Employee Benefits	5,839	6,894	6,941	7,287	8,546
Nonrecurring Appropriations	•	•	•	•	650
Total	\$59,151	\$60,668	\$62,974	\$66,033	\$72,082
State Appropriation	\$59,204	\$61,925	\$63,010	\$66,103	\$72,082

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Audit Council found several areas in need of improvement in the administration of the Board.

Inspections

The Board of Funeral Service employs one inspector who inspects funeral homes in the state. The inspector conducted 930 inspections in FY 87-88.

A Board inspection of a funeral home includes a rating of good, satisfactory or poor on the general condition of the funeral home and the preparation room. The Board also checks to ensure that six caskets of varying quality and price are on display and that prices are displayed as required by the South Carolina Code of Laws. This requirement increases product selection, giving the consumer greater opportunity to purchase an affordable product.

Casket Display

A review of FY 87-88 inspections shows that in 102(11%) cases, representing 60 funeral homes, less than 6 caskets were on display. However, the Board reports it did not have the authority to take disciplinary action against the homes, because a 1983 act of the General Assembly, which established the requirement, applied it only to homes licensed after the act went into effect on January 1, 1984. The Board reports that approximately 90% of homes in 1989 had been licensed before the act went into effect and are exempt from its requirements.

Exempting 90% of funeral establishments from the casket display requirement may reduce product selection and result in higher consumer prices. As explained below, however, this exemption has not been included within the South Carolina Code of Laws and may not be enforceable.

Omitted Exemption

In 1983, the General Assembly passed Act 146, to amend state laws which regulate funeral establishments, funeral directors, and

embalmers. Among other standards in the act, are requirements that funeral establishments have at least six adult caskets on display and 12 off-street parking spaces.

The 1983 act exempted funeral establishments which were licensed as of January 1, 1984 from the requirements of the act, applying them only to establishments licensed thereafter. However, the portion of the act creating the exemption has not been incorporated into the South Carolina Code of Laws. As a result of this omission, it is questionable whether the exemption has the effect of state law.

Fines

State law does not grant the Board authority to issue fines when violations occur. Violators can be fined, but only after the Board pursues a conviction of a misdemeanor in court. The Board would incur increased costs and administrative time if it had to take violators to court. With a fine system, the Board could better ensure that funeral homes in the state are following state law.

FTC Requirements

The Audit Council noted that certain Federal Trade Commission (FTC) requirements are not included on the Board's inspection form. For example, the FTC requires a series of price lists to be available to all consumers. By including such requirements in its inspections, the Board would provide additional protection to consumers against unethical sales practices.

Recommendations

The General Assembly may wish to review the portion of Act 146 of 1983 which was not included in the South Carolina Code of Laws to clarify the current intent of the General Assembly regarding the entities to which requirements should apply. The General Assembly may wish to consider applying the requirements of the act consistently to all funeral establishments. In addition, the

General Assembly may wish to consider amending state law to remove the minimum parking space requirement (see p. A-3).

The General Assembly may wish to consider an amendment to the Board of Funeral Service law that empowers the Board to issue administrative fines to licensees.

The Board of Funeral Service should consider including all FTC requirements of funeral homes in the inspection form used to monitor funeral homes.

Oral Examination

The Board administers an oral examination as one of the requirements for licensure of funeral directors and embalmers. However, the Council found that an oral examination is not needed to gauge competency. In its 1983 review of the Board, the Council recommended that the Board discontinue the oral exam requirement for licensure.

State regulation requires an individual to pass a written examination which is developed and graded by a national testing service. National written tests are an efficient and effective way to test an individual's competency for licensure.

In addition, an individual must pass an oral examination administered by two Board members before being licensed in the state. A Board official told the Council that the oral examination allows Board members to meet the candidates and judge their interpersonal skills. The examination includes questions regarding state law and profession-related topics.

An oral examination is not needed for several reasons. First, interpersonal skills should not be a basis for assessing professional competency. Second, professional competency is already measured by the national examination. Finally, an oral examination on state law is likely to be less consistently administered than a written exam.

Recommendation

The Board of Funeral Service should amend state regulation to delete the requirement of an oral examination as a condition of licensure. If the Board elects to test candidates on state law, a written test should be used.

Size of Funeral Board

In 1983, the Audit Council recommended that the Board of Funeral Service add a public member to the Board. The Council also recommended that the Board reduce its size from nine members to seven. However, §40-19-20 now requires an 11-member Board, including two public members. As a result, the South Carolina Board of Funeral Service is the largest funeral board in the Southeast (see below).

The Board could achieve its objectives of having public participation and regulating the funeral industry with fewer members. In addition, a smaller board would have lower per diem expenditures.

**Table 4A.1: Comparison of
Southeastern States' Funeral
Board Size**

State	Size
Alabama	7
Georgia	6
Florida	7
Mississippi	9
North Carolina	7
South Carolina	11
Tennessee	5
Virginia	9

Source: Funeral Board officials in the above states.

Recommendation

The General Assembly may wish to consider amending §40-19-20 of the South Carolina Code of Laws to reduce the size of the Board of Funeral Service.

Policies and Procedures Manual

The Board of Funeral Service has not adopted a policies and procedures manual. For example, the Board has no written policies on processing complaints or conducting inspections, except for an inspection form. Section 1-23-140 of the South Carolina Code of Laws requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls. The absence of guidelines for Board examinations, hearings, investigations, inspections, and enforcement of Board statutes may result in inconsistent actions.

Recommendation

The Board of Funeral Service should adopt a policies and procedures manual to guide board operations.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

In 1983, the Audit Council recommended that the Board of Funeral Service provide for public representation by adding a member from outside the funeral industry to the Board. Presently, Board membership requires two members from the public not associated with the funeral business. As of January 1989, one of the two positions on the Board was vacant pending appointment by the Governor.

Public Notices of Board Meetings

The Board has not taken adequate steps to ensure public awareness of Board meetings and activities. The Board does not routinely announce its meetings to the general public by posting notice or through the news media. In addition, the Board's address and phone number are not listed in the State Government Telephone Directory. This could result in decreased public awareness, oversight, and participation in Board activities.

Section 40-19-50 of the South Carolina Code of Laws requires the Board to give prior public notice of Board meetings. Also, the Freedom of Information Act requires agencies to post notice of its meetings. In addition, the Audit Council recommended in its 1983 review that the Board provide public notice of its meetings and activities and list its address and phone number in the State Telephone Directory.

Recommendation

The Board of Funeral Service should notify the public of Board meetings as required by state law. Additionally, the Board should list its address and phone number in the state government telephone directory.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Board does not duplicate the functions or services administered by any other state, federal or local agency. The Board works closely with the State Department of Health and Environmental Control (DHEC) concerning death certificates and other matters. The profession is also governed by Federal Trade Commission regulations.

The Board of Financial Institutions regulates pre-need burial contracts in South Carolina. Prior to selling any funeral services on a pre-need basis, funeral homes must receive a license from the Board of Financial Institutions. All funds received under a pre-need contract are required to be held in trust until needed. Section 32-7-90 of the South Carolina Code of Laws prohibits the advertising of pre-need burial contracts. However, in a 1984 Opinion, the Attorney General stated that this prohibition may be an unconstitutional restraint of trade. In January 1989, a bill was introduced in the General Assembly which would allow the advertising of pre-need burial contracts.

Recommendation

The General Assembly may wish to consider amending §32-7-90 of the South Carolina Code of Laws to remove the prohibition against the advertising of pre-need burial contracts.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Board of Funeral Service has not consistently documented complaints and their resolution. The Board received 15 complaints from FY 85-86 through FY 87-88. In 5 of the 15 cases, the Board's records did not indicate the final resolution. According to a Board official, two of the five cases were still open. However, the files lacked complete information to document whether the cases were closed or open.

In addition, the Board does not keep a log of complaints that outlines the complainant, date, type and resolution of the complaint. In its 1983 audit of the Board, the Audit Council recommended that the Board develop a complaint log. By following this recommendation, there would be greater assurance that complaints are processed consistently.

Recommendations

The Board of Funeral Service should ensure that written information about Board actions and reasons for action are included in complaint files.

The Board of Funeral Service should develop a log for tracking complaints.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Funeral Service is governed by the South Carolina Code of Laws. The Audit Council found no violations of state law. However, several areas were noted where statutory changes may be needed.

Board Membership

State law gives two private organizations the authority to recommend nonpublic members to the State Board of Funeral Service. As a result, members of these private organizations may have greater influence on Board matters than other members of the funeral profession.

Section 40-19-20 of the South Carolina Code of Laws states:

The South Carolina Funeral Directors Association may recommend six nonpublic members, and the South Carolina Morticians Association may recommend three nonpublic members. Any individual or private or public group or organization may also make recommendations concerning appointments to the Board.

After these recommendations are made, the Governor appoints the members to the Board.

According to a Board official, no individual has served as a nonpublic member on the Board who has not been a member of one of the private associations. It is unnecessary for state law to specifically mention these associations since any individual or group may also make a recommendation. Furthermore, because these associations are mentioned, they may have undue influence with the Board.

Recommendation

The General Assembly may wish to consider deleting the reference to private associations from §40-19-20 of the South Carolina Code of Laws.

Licensure Requirements

Section 40-19-100 of the South Carolina Code of Laws lists the qualifications an individual must meet in order to be licensed as a funeral director or embalmer. One of the requirements is that the individual:

Is of good moral character, as evidenced by at least two affidavits to that effect.

"Good moral character" is not an objective measure of the skill, competency, or ability of an individual to conduct business in the funeral profession. Personal conduct which does not affect the manner in which a funeral director or embalmer performs his trade should not be a consideration for licensure. Conduct which the Board chooses to prohibit should be clearly defined.

Recommendation

The General Assembly may wish to consider amending §40-19-100 of the South Carolina Code of Laws to delete or define the requirement of good moral character.

Funeral Directors Serve as Coroners

In its 1983 review, the Audit Council recommended that the Board of Funeral Service establish a policy concerning the conduct of funeral directors who serve as coroners. But, as of January 1989, 15(33%) of the state's 46 coroners were licensed funeral directors.

There is no state law which specifically prohibits a licensed funeral director serving as a coroner and the Board has no rules or regulations regarding this practice. However, there is potential for a conflict of interest because funeral directors may market their services while performing their duties as coroner. A 1981 Attorney General's Opinion stated:

Issue (8)
Compliance With the Law

. . . while it is not illegal for a coroner to work for a funeral home in the county in which he holds office, such a practice would have the appearance of impropriety and should be avoided.

Recommendation

The General Assembly may wish to consider amending state law to prohibit professionals licensed by the Funeral Board from serving as coroners.

Schedule of Fees FY 88-89

	Fee
Funeral Director	
Initial License	\$125
Initial License (National Board Certificate Holders)	50
Renewal	40
Embalmer	
Initial License	\$125
Initial License (National Board Certificate Holders)	50
Renewal	40
Special Permit	50
Renewal for Dual Licenses	\$50
Apprentice Registration Fee	25
Funeral Home Crematory Permits	35

Source: Board of Funeral Service

Board of Funeral Service Comments

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State Board of Funeral Service

AVORY BLAND, EXECUTIVE SECRETARY
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June 14, 1989

Mr. Andrew Young
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Young:

The State Board of Funeral Service is in receipt of your response to the views which we expressed in our letter of May 24, 1989 concerning the review of the Board by the Legislative Audit Council.

While we still do not agree on every issue contained in the report, we feel that the thoughts of the Board have been expressed in our earlier letter to you and we can accept the report as it is now written; however, we do still request that "Good Moral Character" be allowed consideration when granting a license to funeral directors and embalmers in South Carolina.

Please be sure that the Board is notified when this report is presented to the proper officials in order for us to have a representative present to respond to any issue which may arise.

Thank you so much for the manner in which this review has been conducted.

Yours very truly,



Ivory Bland
Executive Secretary

AB:bb

Board of Registration for Landscape Architecture

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Introduction

After reviewing the operations and laws of the Board of Registration for Landscape Architects, the Audit Council concludes that the regulation of the landscape architectural profession should be continued as a title protection program for those persons who meet educational and testing requirements. The Audit Council also concludes that §40-28-20 and other statutory and regulatory restrictions to the practice of landscape architecture in South Carolina should be repealed. Recommendations for changes to increase the efficiency of the Board's operations are also made in this review. The Board does fulfill a regulatory function which is not administered by any other governmental agency or private organization.

Background

The registration of landscape architects in South Carolina began in 1976. Act 698 of the General Assembly created a Board of Registration to administer the law and organize the licensing process. The Board is composed of five public members who also serve as the South Carolina Land Resources Commission. A five-member Advisory Council composed of landscape architects assists the Board. Section 40-28-20 restricts the use of the title "landscape architect" and limits the practice only to those individuals licensed by the Board. As of January 1989, 40 states have enacted laws which provide regulation of the profession of landscape architecture. Since 1983, no state has abolished their landscape architectural board while two states have enacted regulation of the profession.

The Board licenses 359 landscape architects, 128 of whom reside in South Carolina. Registration is accomplished by meeting requirements for education and experience, or certification by the nationally-based Council of Landscape Architectural Registration Boards (CLARB). The Uniform National Examination (UNE) is required of all applicants for registration. A corporation or partnership must have a Certificate of Authorization from the Board to offer landscape architect services.

The basis of landscape architecture is to apply specialized principles and procedures in the design, construction, use and maintenance of land areas. Included are such factors as initial

planning for the allocation of land uses, ecological planning, development, preparation of area, grading plans, and construction details. Also, the inspection of projects and maintenance of completed projects are basic functions of the landscape architect.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

Since the Board of Registration does not regulate fees charged by licensees for their services, it has no direct influence on consumer prices. Costs of regulation, such as preexamination education, examination, licensure fees, and registration are borne by landscape architects and may be indirectly passed on to consumers.

However, in their review of the Board's statutes and regulations, the United States Federal Trade Commission (FTC) staff identified two restrictions which may have potential anticompetitive effects. These are detailed in the following sections.

Certificates of Authorization

Section 40-28-160(b) of the South Carolina Code of Laws prohibits corporations and partnerships from using "any form of the title 'Landscape Architect' in connection with the corporate or partnership name." However, §40-28-160(c) states that corporations and partnerships may be formed "as a vehicle for the practice of landscape architecture" provided that the responsibility for the work rests with the licensee rather than the corporation or partnership.

Of the 40 states that regulate landscape architects, 10 (25%) allow corporations to register with the state board. In South Carolina, corporations and partnerships must obtain a "Certificate of Authorization" from the Board.

In their review of the Board of Registration for Landscape Architecture, the Federal Trade Commission staff indicated that §40-28-160(b) may have potential anticompetitive effects. The FTC stated, in part:

The use of the title landscape architect in the title of a firm whose members are so licensed could convey useful information to consumers and reduce their search costs in identifying and procuring the services of landscape architects. The harm that could be caused by the use of the title in the firm names is not readily apparent.

By eliminating this prohibition, the Board may enable consumers to be more informed about firms that offer landscape architectural services.

Contractual Relationships

In its review of the statutes and regulations of the Board of Registration for Landscape Architecture, the Federal Trade Commission (FTC) staff identified a regulation which may have potential anticompetitive effects. Regulation 74-8(A)(5) states that landscape architects may not:

... obtain, offer to undertake, or accept a commission for which he knows another legally qualified individual or firm has been selected or employed until he has evidence that the latter agreement has been terminated.

According to Board staff, this rule was probably implemented to protect the integrity of contractual relationships among landscape architects.

The FTC staff indicated that Regulation 74-8(A)(5) may have a chilling effect upon the solicitation of business by landscape architects. According to FTC staff, the regulation:

... may be overbroad insofar as it prohibits the solicitation of business from a client who has 'selected' a landscape architect but has not entered into a contract for the architect's employment.

Furthermore, according to FTC staff, restrictions on the ability of producers of goods and services to accept an offer from a potential client who has procured services from another producer may "lead to higher prices by restraining competition among producers."

Recommendations

The General Assembly may wish to consider rescinding §40-28-160(b) which prohibits corporations and partnerships from using the title "landscape architect" in the firm's name.

The General Assembly may wish to consider replacing the words "selected or employed" with "contracted" in Regulation 74-8(A)(5) to avoid the potential anticompetitive effects outlined by the United States Federal Trade Commission staff.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Regulation of landscape architects has been recognized as an appropriate governmental function in 40 of the 50 states. Ten states do not regulate landscape architects. The population of these ten states, however, is only approximately 12% of the population of the United States. (Five of the ten least populous states do not regulate landscape architects.) Therefore, approximately 88% of the United States population live in areas which regulate landscape architects.

Termination of the title protection function of the Board of Registration for Landscape Architects may negatively impact the public in South Carolina. Elimination of the examination and regulation of landscape architects may impair the public's ability to identify competent practitioners in the field. However, termination of practice restrictions could result in greater availability of services and may result in lower prices for consumers.

In addition, termination of the Board would result in South Carolina's not being able to offer the Uniform National Examination. The examination, which is only offered by the nationally-based Council of Landscape Architect Registration Boards, is administered through individual state landscape architect boards.

In January 1989, the United States Federal Trade Commission (FTC) staff responded to an Audit Council request to review and comment on possible restrictive or anticompetitive effects of the statutes and regulations of the Board of Registration for Landscape Architects and 8 other regulatory agencies. The FTC is charged by Title 15 of the United States Code, Section 45, to prevent unfair methods of competition or commerce. In addition, the FTC seeks to improve consumer access to professional services, conducts regulatory studies of licensed professions, and submits comments to states on various issues of professional licensing. The Audit Council has applied the FTC staff's comments in the following area.

Certification of Landscape Architects

The Board of Landscape Architecture's statutes allow unlicensed persons to perform many of the functions of a landscape architect even though §40-28-20 of the South Carolina Code of Laws restricts practice only to those individuals licensed by the Board. Architects, engineers, and professional land surveyors, however, are allowed by §40-28-150 to practice landscape architecture "when such work is incidental to their practice." In addition, this section also permits landscape contractors, nurserymen, gardeners, and regional/urban planners to practice their profession without regulatory constraints. These professions all include aspects of landscape architecture which may be practiced without a landscape architect's license.

An alternative to the current licensing structure of the Board would be voluntary certification. Under this program, only persons who meet educational, testing, or experience requirements may hold themselves out as certified members of the profession. However, persons who do not meet these requirements are permitted to practice their trade.

In addition, FTC staff stated that the licensing structure for landscape architects already resembles a "certification program." Since South Carolina law permits landscape contractors, gardeners, and nursery owners to engage in the practice of their professions without regulatory restraint, consumers are required to retain the services of a landscape architect only under very limited circumstances. In addition, the staff stated that a license as a landscape architect is similar to a title protection program in that it does not bar unlicensed persons from performing many of the functions of a landscape architect.

Under a title protection program (voluntary certification), the Board would still be able to offer the Uniform National Examination, retain its membership with the Council of Landscape Architects Registration Boards (CLARB), and provide levels of minimum competency needed to be certified as a landscape architect.

Twelve (30%) of the 40 states which regulate landscape architects restrict only use of the title and not the practice of landscape architecture. Only persons who meet minimum

qualifications may identify themselves as landscape architects, but noncertified persons are not barred from practicing the occupation. In contrast, under a licensing system, only individuals who obtain a license from the state may lawfully engage in the practice of the occupation.

A state-supported title protection program may provide service quality information to consumers without imposing the costs associated with licensing. Consumers can assess quality on the basis of their own purchase experience, the experience of friends and relatives, consumer-oriented publications, and consumer organizations such as the Department of Consumer Affairs and the Better Business Bureau. FTC staff, in their review, advocated a voluntary certification program for the following reason.

The advantage of this sort of system is that it conveys to consumers the kinds of information that a licensing regime is intended to provide but does not impose quality preferences on consumers. Consequently, consumers who prefer to purchase lower priced, lower quality services may continue to do so.

By adopting a title protection program, the Board can regulate use of the title "landscape architect" without imposing restrictions upon less qualified practitioners and, thereby, limiting the availability of services.

Recommendation

The General Assembly may wish to consider whether landscape architect licensure should be modified by removing restrictions to the practice of landscape architecture.

Determine the overall costs, including manpower, of the agency under review.

In FY 87-88, the Board of Registration for Landscape Architecture collected \$30,395 in fees and spent \$19,788. The Board's revenues for FY 87-88 exceeded an Appropriation Act requirement that they be at least 115% of appropriated funds (see Table 3B.1). A staff member of the South Carolina Land Resources Commission spends approximately 45% of her time administering the functions of the Board. However, the salary costs of this staff member's service to the Board are absorbed by the Land Resources Commission's administrative program and are not paid from revenues produced by the Board.

From FY 85-86 through FY 87-88, approximately \$26,244 of the staff member's salary was spent performing Board-related activities. These personal service expenses were not reported in the Board's annual reports or budget documents but were reported in the Land Resources Commission's annual reports and budget documents.

Regulatory boards should include all personal service costs to accurately present operating expenses. According to generally accepted auditing standards (GAAS), financial statements should contain adequate disclosure of all pertinent data necessary for a fair presentation.

By not including personal service costs, the Board is understating its actual expenses. The state, in effect, is subsidizing landscape architect licensing since salary costs are not being supported by licensing revenues. Furthermore, the public is not informed of the exact costs of administering the profession.

Recommendation

The Board should include all costs, including personal services, in its reporting of Board expenses.

Issue (3)
Administrative Costs

**Table 3B.1: Source of Revenues,
Expenditures, and Appropriations**

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
License Fees	\$18,820	\$18,755	\$19,610	\$26,397	\$24,712
Exam Fees	3,795	4,812	4,021	3,998	4,570
Total	\$22,615	\$23,567	\$23,631	\$30,395	\$29,282
Expenditures:					
Personal Services	\$840	\$1,080	\$770	\$1,085	\$1,400
Other Operating Expenses	19,431	18,196	22,763	18,703	23,600
Total	\$20,271	\$19,276	\$23,533	\$19,788	\$25,000
State Appropriation	\$20,850	\$20,850	\$25,000	\$25,000	\$25,000

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Audit Council reviewed the Board's operations and noticed several changes in administration since the 1984 review which may have improved the Board's efficiency.

Written Policies and Administrative Procedures

In 1984, the Audit Council recommended that the Board develop a manual to guide Board operations and decisions. The Board has established a policies and procedures manual which addresses the handling of complaints and the administration and grading of the Uniform National Examination (UNE). In addition, the policies and procedures manual contains information and guidelines on annual license renewal, delinquency notices for expired licenses, reinstatement policies, fee schedules, and methods of registration for licensure.

Record-Keeping

The Board's record-keeping has also improved since the 1984 review. The Audit Council found in 1984 that data and files were not readily available for review. In this review, Board data requested by the Audit Council were maintained in separate files from the Land Resources Commission records and were readily available for review. Travel and expense vouchers for the Advisory Council members were maintained in a single file and the Board has discontinued the practice of having Advisory Council members sign blank travel vouchers in advance of their use. A systematic filing procedure for the handling and disposition of complaints has been implemented by the Board and is included in the Board's policies and procedures manual. A central complaint log for the recording of complaints is also used.

Selection of Exam Graders

In 1984, the Audit Council found that some practical exam sections were graded by examiners selected on the basis of informal and subjective criteria. This could lead to bias in grading. Since then, the Board has adopted formal procedures for the selection of individuals to grade Sections 3, 4, and 5 of the UNE which are outlined in the policies and procedures manual. The Board has entered into a regional evaluation

agreement with the Alabama, Mississippi, North Carolina, Tennessee, Arkansas, and Texas landscape architect boards to exchange graders to assist in grading the design application, design implementation, and grading and drainage sections of the UNE. In addition, the grading of these sections is further reviewed by the Council of Landscape Architectural Registration Boards (CLARB) upon receipt of the examinations from the states administering the exam.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The South Carolina Land Resources Commission, composed of five public members appointed by the Governor, serves as the Board of Registration for Landscape Architects. The Commission is required by §40-28-30 to select a five-member Advisory Council, composed of licensed landscape architects with at least five years experience, to assist the Commission with the administration of the law regarding landscape architects. Advisory Council members serve staggered, five-year terms such that at least one member's term expires each year.

The Advisory Council administers the Uniform National Examination and recommends to the Board qualified applicants for registration. The Advisory Council also recommends changes in policies, services, and procedures and provides advice and consultation to the Commission. In order to enhance communication, the Deputy Director of Administration and Regulatory Services for the Land Resources Commission attends all meetings of both the Commission and the Advisory Council. Recommendations made by the Advisory Council are reviewed by the Land Resources Commission. Scheduled meetings and agendas of the Land Resources Commission and the Advisory Council are posted, publicly announced, and are open to public participation.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

Since professional jurisdiction between architects, engineers, land surveyors, and landscape architects may overlap at times, §40-28-150 of the South Carolina Code of Laws allows these other professionals to perform landscape architectural work when such work is incidental to their respective practices. However, there is no other regulatory body which has the authority to oversee the practice of landscape architecture. Accordingly, the Board does not duplicate the functions or services of any other governmental entity.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

In 1984, the Audit Council found that the Board did not have a systematic procedure for processing complaints. The Board has since developed written policies and procedures for the investigation and resolution of complaints which are included in the Board's policies and procedures manual. Complaints are maintained in a separate file and a complaint log is used to record complaints as they are received. During the 3-year period from July 1, 1985 to June 30, 1988, the Board received 9 complaints. At least eight of the complaints filed during this period were expediently resolved; a date of resolution for one complaint was not available. The average time from reception to resolution of the 8 complaints was 16 days. Of the nine complaints, eight pertained to unauthorized use of the title "landscape architect," while one complaint regarded advertisement of landscape architectural services by a firm who no longer employed a licensed landscape architect.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Registration of Landscape Architecture is regulated only by the statutes and regulations enacted by the State of South Carolina. The Audit Council reviewed all laws and regulations pertaining to the administration of the Board and the Advisory Council to determine consistent and equitable application. The Audit Council has determined the Board of Registration and the Advisory Council to be in compliance with all appropriate statutes and regulations regarding the profession.

Schedule of Fees FY 88-89

	Fee
CLARB--Uniform National Exam	
In-State	\$230
Out-of-State	300
CLARB--UNE Administrative Fee for Exam Retakes	\$50 + cost
for each section (varies from \$15 to \$45)	
Registration	
In-State	75
Out-of-State	80
Annual License Renewal	
In-State	48
Out-of-State	58
Temporary License	\$100
Certificate of Authorization (for corporations and partnerships)	100
Annual Certificate of Authorization Renewal	100
Duplicate License/Certificate	12

Source: Board of Registration for Landscape Architecture

Board of Registration for Landscape Architecture Comments

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Executive Director

**LAND RESOURCES
CONSERVATION COMMISSION**

June 15, 1989

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, SC 29201

Dear Mr. Schroeder:

We appreciate the opportunity to work with you and your staff, Ms. Cheryl Ridings and Mr. Dean Williamson, during this audit process.

Enclosed is our response to the audit report issued by the Legislative Audit Council on the Landscape Architect Registration Program. If we can provide you with further information, please let me know.

Sincerely,

A handwritten signature in cursive script, reading "Cary D. Chamblee".

Cary D. Chamblee
Deputy Director

enclosure

cc: John W. Parris
Diane Vanderhoff
Members, Landscape Architect Advisory Council

The preliminary sunset audit report of the Legislative Audit Council has been reviewed by the staff of the S.C. Land Resources Commission and the Landscape Architect Advisory Council. It is the studied opinion of those who have reviewed this report on behalf of the Commission that the continued regulation of the practice of landscape architecture is critical to the health, safety, and welfare of the people of South Carolina and to the economic and environmental development of the State.

ISSUE (1) EFFECTS OF REGULATION

The audit report recommended two (2) changes as follows:

1. CERTIFICATES OF AUTHORIZATION - Section 40-28-160.
The General Assembly may wish to consider rescinding Section 40-28-160(b) which prohibits corporations and partnerships from using the title "Landscape Architect" in the firm's name.
2. CODE OF ETHICS - Regulation 74-8(A)(5)
The General Assembly may wish to consider replacing the words "selected or employed" with "contracted" in Regulation 74-8(A)(5) to avoid the potential anticompetitive effects outlined by the United States Federal Trade Commission staff.

RESPONSE TO ISSUE 1 - EFFECTS OF REGULATION

1. The S.C. Land Resources Commission's Board of Registration for Landscape Architects has no objection to deleting Section 40-28-160(b) from the law.
 2. The S.C. Land Resources Commission agrees with the Legislative Audit Council's findings recommending that Regulation 74-8(A)(5) be changed to read, "contracted", instead of "selected or employed".
-

Issue (2)/IMPACTS OF DEREGULATION

The audit report recommends that "The General Assembly may wish to consider whether landscape architect licensure should be modified by removing restrictions to the practice of landscape architecture."

The Landscape Architect Registration Law, Act 698 of 1976, mandated the establishment of the Landscape Architect Registration program within the S.C. Land Resources Commission. It was determined that in order to conserve our environment and protect the health, safety, and welfare of the citizens of this State, it was necessary to ensure the protection of the State's natural resources and wise management of its rapidly developing areas by regulating the professional competence of landscape architects through rigid requirements on education, experience, and training. This program has been operational for approximately 12 years. Currently 379 landscape architects and 51 corporations and partnerships are registered in South Carolina.

The practice of landscape architecture is a complex field which highly impacts the health and safety of the public. The field of landscape architecture encompasses the research, planning, design, and development of overall site designs which may include site analysis, grading, drainage, and construction plans for roads, as well as, natural land features. The landscape architectural curriculum includes training in architectural and engineering principals, geology, horticulture, soil science, irrigation and drainage, drafting, surveying and mapping, construction details, and spacial design.

The Landscape Architectural Accreditation Board (LAAB) serves as the accrediting agency for professional baccalaureate and graduate degree programs in landscape architecture and is recognized by the Council on Postsecondary Accreditation and the United States Department of Education. The LAAB reviews landscape architectural curriculums offered by colleges and universities and publishes a list of institutions offering "landscape architecture accredited programs". There are 44 such institutions in the United States and 2 in Canada, offering accredited degrees in landscape architecture. Clemson University now offers a five-year undergraduate degree in Landscape Architecture through the College of Architecture. In its second year there are currently 16 students enrolled, and 34 applicants for the 1989 Fall Term.

According to page 14 of the Federal Trade Commission's letter, there are two basic justifications for licensing. The first refers to title and shows "the need to cure a potential informational asymmetry" and the second refers to practice and shows "the need to protect third parties from harm resulting from incompetent professional services". We feel that it is very clear that the Landscape Architect Registration Law satisfies both of these justifications.

Through Act 698 of 1976, a joint title and practice act, the S.C. Land Resources Commission was authorized to regulate the practice of landscape architecture. The joint title and practice act enables the Board not only to restrict the use of the title "landscape architect", but ensure that only qualified professionals are practicing landscape architecture in the State. If only a title act is authorized, then anyone could practice landscape architecture regardless of competency as long as the title "landscape architect" is not used.

The Landscape Architect Registration Program of the S.C. Land Resources Commission has been audited by the Legislative Audit Council on two (2) prior occasions, once in 1979 and again in 1984, and in both audits the importance of regulating the practice of landscape architecture was emphasized.

The 1979 Legislative Audit Council report stated:

"The absence of regulation over landscape architectural services would result in the loss of identifiable land design professionals whose environmental expertise and concern for human aesthetic values have made South Carolina a safe and pleasant place in which to live. Without control mechanisms such as State regulation, incompetent providers of landscape architectural services would endanger the public's health, safety, and welfare in three areas: improper land planning, faulty design, and inadequate consideration to environmental issues or human need..."

Again in 1984 the Landscape Architect Registration Program was recommended for continuation, and in this report, the Legislative Audit Council stated:

"The potential impact of termination of the Board on the public health, safety and welfare in South Carolina is difficult to measure objectively. Professionals in the field of landscape architecture state that there are basic issues of health, safety and welfare involved in the practice of the

profession beyond those of aesthetics. Moreover, these considerations impact the public in a diversity of settings.

The profession of landscape architecture requires competency in the design of features such as walks, parking areas, fences, stairways, retaining walls, roadway alignment and medians, construction on flood plains, erosion control mechanisms, and grading and drainage plans. Competency includes knowledge of safety features which may be above and beyond those required by applicable building codes.

The landscape architect not only designs such features, but also:

‘Inspects construction work in progress to insure compliance with landscape specification to approve quality of materials and work and to advise client and construction personnel of landscape features.’ (Dictionary of Occupational Titles, p. 411, U.S. Department of Labor).’

Improper design and/or execution of features such as those described above can result in serious danger to the public.

The fact that the public is broadly impacted by the work of landscape architects is illustrated by the following quote from the United States Government Civil Service Qualification Standards.

‘These services (of the landscape architect) are typically performed for national parks and parkways, national forests, highways, recreational and resort areas, airports, multi-use reservoirs, public building and institutions, land subdivisions, housing developments, communities, national cemeteries, military installations, and their component areas and facilities.’”

As of May 1989, 41 states have enacted laws which provide regulation of the profession of landscape architecture. This figure has increased by one state since your preliminary report was issued. Twenty-seven (66%) of the 41 states now have title and practice laws. This is an increase of 5 states since the last Sunset Review in 1984, and the national trend is toward initiating practice laws in all the states. Of the 10 states in our region (CLARB Region III) only 3 do not have practice acts. Several states currently have legislation pending to implement practice acts.

All Federal, state and local agencies, involved in landscape architectural design for use by the general public recognize the need for landscape architects as design professionals. Many architectural and engineering firms employ registered professional landscape architects to design those aspects of their projects which are primarily landscape architecture.

Another point to be considered is the availability of professional liability (malpractice) insurance in a state that does not regulate practice. The provider of this type of insurance requires professional registration, insisting that the design professional follow through to final completion of the project because the landscape architect is liable for any errors and omissions in the overall site design that adversely affect public health, safety, and welfare (i.e., improperly specified relationships between water supplies, such as artificial ponds, fountains, and water drainage facilities which could result in contamination of water supplies; improper design of outdoor lighting systems/supply lines, which could result in inadequate visibility, or undue fire or shock hazards; inadequate design of outdoor structures, such as those used in parks or other recreational facilities, such as small shelters, footbridges, steps, retaining walls, gazebos, decks, playground equipment, or rest facilities; inadequate design or omission of barrier free design for handicapped, etc.)

The public or client would not be protected through insurance for projects designed by unregulated persons.

The audit report cites Section 40-28-150 as allowing "unlicensed persons to perform many of the functions of a landscape architect." The purpose of this section is to make it clear that the S.C. Land Resources Commission may not regulate professions that only touch on part of the practice of landscape architecture. Landscape contractors may grade/plant/pave; nurserymen grow flowers/trees/shrubbery; gardeners plant/maintain; regional/urban planners plan. If the public does not require the sophisticated services of a professional landscape architect, they can seek services from the suppliers listed above.

However, although the suppliers listed above perform some aspects of the built environment of landscape architecture, they do not practice landscape architecture, and are not qualified to become registered landscape architects, anymore than a sub-contractor of built architecture (i.e., welder, roofer, painter, sheetrock) is qualified to practice architecture.

The Architectural Law, S.C. Code of Laws, Section 40-3-160 (4), also exempts engineers when the architectural work is incidental to the practice of engineering. This wording is standard in all architectural and landscape architectural laws nationwide. When first formulated, the landscape architectural law was patterned after the architectural law.

Architects, engineers, and land surveyors may perform landscape architectural related work when incidental to their practice. Landscape Architects are relatively equal to architects and engineers in their training and experience requirements and should be regulated in much the same manner. An estimated 25% of the resident landscape architects in South Carolina are employees of architectural/engineering firms. This fact indicates that even though architects/engineers may be entitled to practice landscape architecture by the letter of the law, in reality, they recognize the need for landscape architects on staff to execute landscape architectural services.

The practice act ensures that only qualified and competent individuals offer services to the public.

The S.C. Land Resources Commission and the Landscape Architects Advisory Council support retaining the Landscape Architects Law as a joint title and practice act.

ISSUE (3)/ADMINISTRATIVE COSTS

DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW

The Landscape Architects Registration Program is a division of the S.C. Land Resources Commission, the staff member devotes 45% of her time to directing the activities of the Landscape Architects Registration Program, and 55% to administrative functions of the Commission. The personal service expense shown on Table 3B.1 is for Landscape Architect Advisory Council members' per diem expense. The Commission reported the staff member's personal service expenses in the Commission's administrative program which used the majority of the staff member's time.

The Commission has a permanent part-time clerical position pending in the FY1989-90 Budget Request reflecting personal service expenses in the Landscape Architect Registration Program. This part time

position will reduce the current coordinator's time to approximately 25%.

All revenue generated by the Landscape Architect Registration Program are deposited in the General Fund and any excess is lapsed to the General Fund. In addition, all professional and occupational licensing boards are required by proviso to generate 115% of the State Appropriation to be lapsed to the General Fund. Fees must be reviewed to determine if revenues are adequate to support this change.

The S.C. Land Resources Commission will take steps to include all costs associated with the Landscape Architect Registration program in that respective program budget.

Issue 4 - No comment necessary.
Issue 5 - No comment necessary.
Issue 6 - No comment necessary.
Issue 7 - No comment necessary.
Issue 8 - No comment necessary.

Board of Architectural Examiners

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Introduction

After reviewing its laws and operations, the Legislative Audit Council concludes that there is a public need for the regulation of architecture, and that the Board of Architectural Examiners should be continued. In most areas, the Board has operated efficiently and effectively. However, the Board has an unnecessary restriction on price competition.

Background

The Board of Architectural Examiners was created by the General Assembly in 1917, placing South Carolina among the first 14 states to regulate the practice of architecture. Since 1951, every state has regulated this profession.

Architects design and review the construction of buildings. State law restricts the use of the title "architect" plus the practice of architecture to persons with a certificate of registration. The Architectural Board grants certificates of registration to architects based on criteria including education, experience, and knowledge of architecture. Firms practicing architecture are required to obtain certificates of authorization. In addition, the Board investigates complaints regarding the profession, and investigates and disciplines violators of South Carolina architectural laws.

The Board is composed of six members, including five architects and one representative of the general public. These six individuals are appointed by the Governor to five-year terms. As of January 1989, there were 2,249 registered architects, 1,544 of whom lived out-of-state, and 546 registered firms, 302 of which were located out-of-state.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Architectural Board has no direct control over the prices charged by architects for their services. The Board does impose regulation costs on architects through examination fees and registration fees. However, it is not likely that these costs significantly affect the price of architectural services.

Consumer prices may be indirectly affected by State Regulation 11-17 which restricts price competition among architects. This regulation was reviewed by the Audit Council with the assistance of the United States Federal Trade Commission, and is discussed below (see p. C-13 and App-1 for FTC comments on this and other issues).

Price Competition

South Carolina Regulation 11-17 states:

Architects shall not enter into a contract for professional services on any basis other than direct negotiation thereby precluding participation in any system requiring a comparison of compensation.

This regulation lessens competition by restricting the circumstances in which architects may communicate the price of their services. For example, competitive bidding is prohibited by Regulation 11-17, according to the South Carolina Attorney General's Office. The anticompetitive restrictions of Regulation 11-17 are unique among southeastern states and are not necessary to protect the public health, safety, or welfare. The Audit Council recommended deletion of Regulation 11-17 in 1979 and 1984, but it has not been removed.

In 1978 and 1983, the South Carolina Attorney General's Office ruled that Regulation 11-17 violated the federal Sherman Antitrust Act. However, the Attorney General's Office noted that Regulation 11-17 would be exempt from antitrust laws if it were approved by a "state action," such as specific legislation by the General Assembly. In 1985, Regulation 11-17 was approved by a joint resolution of the General Assembly. This resolution constituted a "state action" and, thus, an exemption from antitrust laws, according to a January 1987 Opinion from the Attorney General's Office.

In 1987, the Board announced that it would begin enforcing Regulation 11-17 and issued a new interpretation. According to a 1988 "administrative interpretation" issued by the Board, architects are permitted to state compensation to prospective clients under certain circumstances, but not when the "sole basis for selection of the architect is the architect's compensation." This interpretation permits compensation to be stated to prospective clients only "where architectural services necessary to protect the public health, safety and welfare have been defined" and only in a procurement system which includes direct negotiation.

The Board's 1988 interpretation is more permissive than a literal interpretation of Regulation 11-17, which precludes "participation in any system requiring a comparison of compensation." Nonetheless, the new interpretation limits the circumstances in which an architect may communicate price and prohibits competitive bidding, as defined by the South Carolina Procurement Code.

Board members have stated the purpose of this restriction on price competition is to protect the public from architecture which is unsafe or of poor quality. The Audit Council, however, has not found adequate evidence that Regulation 11-17 is necessary to meet these goals. There is no restriction on price competition in the states of Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee, or Virginia. As a result, in these states, the purchasers of architectural services have the freedom to select architects based on price or any other criteria. The South Carolina Architectural Board could provide no evidence that Regulation 11-17 has resulted in safer or higher quality architecture in South Carolina than in other southeastern states. In addition, Federal Trade Commission analysts found that this regulation may "increase the average price paid by consumers for architectural services" while providing questionable benefits.

Recommendation

The Board of Architectural Examiners should take action to remove Regulation 11-17 from its regulations.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The complete deregulation of architecture would remove state laws and regulations which help ensure the quality of building design services architects provide to the public. Deregulation would eliminate entry requirements, including education and examination, which help ensure that architects are qualified. It would also remove a mechanism for suspending or revoking an unfit architect's certificate of registration.

Deregulation would increase the number of unqualified architects. Although the price of architectural services might decrease due to increased competition among a greater supply of architects, this benefit might be more than offset by the exposure of the public to harmful practitioners. Unqualified architects would be more likely to design buildings out of compliance with building codes, which protect the public's safety. As a result, the Audit Council recommends the continued regulation of architects and architecture.

Determine the overall costs, including manpower, of the agency under review.

The Architectural Board receives an annual appropriation from the General Assembly. It also collects revenues through examination and registration fees, which are deposited in the General Fund of the state (see p. C-12). In FY 87-88, revenues were equal to 116% of appropriations, thus exceeding a requirement of that year's Appropriation Act that revenues be equal to 115% of appropriations. From FY 84-85 through FY 88-89, the Board's expenditures increased from \$125,769 to an estimated \$206,573 (see Table 3C.1).

The Board has a director, an investigator, and three administrative staff.

Table 3C.1: Source of Revenues, Expenditures, and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
Registration Fees	\$107,700	\$119,180	\$126,535	\$197,315	\$210,050
Exam Fees	12,019	10,219	14,591	21,520	19,300
Application Fees	13,200	14,160	14,120	14,880	15,400
Miscellaneous	1,754	1,880	1,650	2,108	2,070
Total	\$134,673	\$145,439	\$156,896	\$235,823	\$246,820
Expenditures:					
Personal Services	\$53,959	\$63,579	\$69,349	\$80,716	\$90,857
Employee Benefits	8,762	10,993	12,074	15,604	16,976
Other Operating Expenses	63,048	70,768	72,087	96,484	98,740
Total	\$125,769	\$145,340	\$153,510	\$192,804	\$206,573
State Appropriation	\$169,749	\$172,507	\$174,600	\$203,343	\$206,573

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

Since the Audit Council's 1984 review, there have been significant improvements in state laws affecting the Architectural Board's administration. The Board has also improved in its establishment of written policies.

Amendments to State Law

In 1984, the Audit Council noted that state law needed to be more specific in defining which projects were architectural in nature and subject to state law requiring an architect's seal. The seal is placed on architectural designs to document that the responsible architect is registered in South Carolina. That same year, the General Assembly amended state law to more specifically define projects needing an architect's seal, including minimum square footage and usage standards as well as "shop drawings" used by general contractors and home builders.

Also, in 1988 the General Assembly passed a law assigning local building officials the duty of ensuring that architects who seal building plans in their jurisdictions are registered in South Carolina.

Registration Requirements

In 1984, the Audit Council cited two registration requirements in state law as being unnecessarily restrictive. State law required that applicants be at least 25 years old and "of good moral character." That same year, the General Assembly amended state law to remove these requirements.

Examination Process

All applicants for South Carolina registration must pass the Uniform Architect Registration Examination of the National Council of Architectural Registration Boards (NCARB). This national exam is developed and graded by NCARB but administered by state architectural boards. In 1984, the Audit Council recommended that state regulations be amended to coincide with a Board's practice of permitting applicants to retake only previously failed sections of the exam. State regulations have since been amended to permit unlimited retakes of previously failed sections of the exam.

**Written Policies and
Administrative
Procedures**

In 1984, the Audit Council recommended that the Board develop a manual to track Board policies and interpretations of its laws and regulations. The Board now maintains a manual of its policy decisions dating back to 1970. The Board also has written administrative procedures for areas such as registration application, renewal, reciprocity and examination.

During the Audit Council's current review, the Board developed a flow chart for investigating complaints, however, it did not have a written statement of procedures for this area. Section 1-23-140 of the South Carolina Code of Laws requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures. Written procedures for the investigation of complaints would increase the likelihood that they are conducted consistently.

Recommendation

The Board of Architectural Examiners should develop and maintain a written statement of administrative procedures for the investigation of complaints.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Architectural Board conducts public meetings approximately eight times per year. Public announcements of meetings are posted outside the door of the Board's office. In addition, local news media are notified of meetings.

In its 1984 review of the Board, the Audit Council recommended that state law be amended to require that a nonarchitect be added to the Board. That same year, the General Assembly amended state law to expand Board membership from five to six persons, one of whom must be "a representative of the general public."

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Audit Council found no evidence that the Architectural Board significantly duplicates the services, functions or programs of any other state, federal or local government agency. There are other state government agencies which regulate related professions, including engineers, contractors, and home builders. Also, local government building officials are responsible for ensuring that architects who seal plans are registered in South Carolina. However, the Architectural Board is the only entity responsible for issuing certificates of registration for architects to practice in South Carolina.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

In general, complaints to the Board have been well investigated. Complaints are investigated by a part-time investigator employed by the Board. From FY 85-86 through FY 87-88, the Architectural Board investigated 198 complaints. The Audit Council reviewed a random sample of 53 complaints. Of the 53 complaint cases reviewed, 22 involved unregistered individuals practicing architecture, 17 involved unregistered firms practicing architecture, 13 involved various other issues, and records regarding 1 case could not be located by the Board. Outside of this sample, the Audit Council also reviewed seven disciplinary actions taken by the Board against registered architects.

In 1984, the Audit Council recommended that the Board maintain individual complaint files and develop policies and procedures for investigating complaints. The Board now maintains individual complaint files which are monitored using a complaint log. However, at the time of this 1989 review, the Board had not yet developed written policies and procedures for investigating complaints (see p. C-7).

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Architectural Board was created under and is subject to South Carolina laws and regulations. Until 1985, Board Regulation 11-17 violated federal antitrust laws (see p. C-2). Currently, the Board needs to develop and maintain written procedures for the investigation of complaints to be in compliance with §1-23-140 of the South Carolina Code of Laws (see p. C-7). The Audit Council found no other violations of law.

Schedule of Fees FY 88-89

	Fee
Application Fee by Exam	\$40
Application Fee by Reciprocity	40
New Firm Registration Fee	40
Firm Renewal Fee In-State	65
Firm Renewal Fee Out-of-State	70
Annual Fee by Examination	50
Annual Fee by Reciprocity	85
Renewal Fee In-State	55
Renewal Fee Out-of-State	80
Exam Fee--First Appearance	350
Miscellaneous--Certificates	25
Miscellaneous--Rosters	5
Miscellaneous--Service/Copy Charge	10

Source: Board of Architectural Examiners

FTC Comments March 13, 1989



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 13, 1989

George L. Schroeder
Director
Legislative Audit Council
State of South Carolina
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The staff of the Federal Trade Commission 1/ is pleased to respond to the invitation of the Legislative Audit Council of the State of South Carolina to comment on Regulation 11-17 of the South Carolina Board of Architectural Examiners. 2/ Regulation 11-17, as interpreted by the Board, 3/ prohibits architects from participating in competitive bidding or "donat[ing] services" to clients with the intent of influencing the client's award of a project. We believe that the regulation is likely to harm competition and suggest that the Council consider the regulation's anticompetitive effects in determining whether it should be retained.

I. Interest and Experience of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45. Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. The Commission has sought to improve consumer access to professional services by initiating antitrust enforcement proceedings 4/ and conducting

1/ These comments represent the views of the staff of the Federal Trade Commission's Bureau of Competition and do not necessarily represent the views of the Commission itself or any individual Commissioner.

2/ Regulations of Board of Architectural Examiners, § 11-17.

3/ Board of Architectural Examiners, Administrative Interpretation of Regulation 11-17 (September 1988).

4/ See, e.g., Massachusetts Board of Registration in Optometry, [FTC Complaints and Orders transfer binder] 5 Trade Reg. Rep.
(continued...)

George L. Schroeder

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studies concerning various facets of the regulation of licensed professions. 5/ In addition, the Commission's staff has submitted comments to state legislatures and administrative agencies on various issues of professional licensing and regulation. 6/ As one of the two federal agencies with principal responsibility for enforcing the antitrust laws, the Commission is particularly interested in restrictions that may adversely affect the competitive process and raise prices to consumers.

II. Analysis of Regulation 11-17

Regulation 11-17 of the South Carolina Board of Architectural Examiners states in its entirety: "Architects shall not enter into a contract for professional services on any basis other than direct negotiation thereby precluding participation in any system requiring a comparison of compensation." As interpreted in a September 1988 administrative interpretation of the Board, Regulation 11-17 prohibits architects from participating in competitive bidding or "donat[ing]" architectural services to prospective clients. 7/ These prohibitions are discussed below.

4/(...continued)
(CCH) ¶ 22,555 (June 21, 1988); Rhode Island Board of Accountancy, 107 F.T.C. 293 (1986) (consent order); Louisiana State Board of Dentistry, 106 F.T.C. 65 (1985) (consent order); American Medical Ass'n, 94 F.T.C. 701 (1979), aff'd, 638 F.2d 443 (2d Cir. 1980), aff'd mem. by an equally divided court, 455 U.S. 676 (1982); American Dental Ass'n, 94 F.T.C. 403 (1979), modified, 100 F.T.C. 448 (1982), 101 F.T.C. 34 (1983) (consent order).

5/ See, e.g., Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983); Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

6/ In the past two years, Commission staff have commented on rules of professional conduct or regulations governing attorneys, chiropractors, dentists, optometrists, pharmacists, physical therapists, physicians, and real estate brokers.

7/ Architects are subject to disciplinary action for "dishonest practice, unprofessional conduct or incompetent practice" if they violate the Board's rules. Regulations of Board of Architectural Examiners, § 11-15, 11-15(A)(3).

George L. Schroeder

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(a) The Ban on Competitive Bidding

Regulation 11-17 and the Board's interpretation prohibit architects from participating in competitive bidding. Under the regulation, architects may not participate in a "system requiring a comparison of compensation," such as competitive bidding. The Board's interpretation permits architects to disclose their compensation only "in direct negotiations where architectural services necessary to protect the public health, safety and welfare have been defined." 8/

As you know, the Supreme Court has held that a ban on competitive bidding imposed by the National Society of Professional Engineers violated section 1 of the Sherman Act. 9/ Similar bans in the medical 10/ and accounting 11/ professions have also been held unlawful. 12/ While a prohibition on competitive bidding may not eliminate price competition, it increases customers' search costs in procuring the services of architects. Because Regulation 11-17 permits architects to disclose their price only in individual negotiations, purchasers of architectural services are forced to engage in a process of preliminarily selecting an architect, negotiating a price, and then either hiring the architect or selecting another architect and beginning the process afresh. 13/ Because such a process often will be less efficient than a single competitive bidding

8/ Administrative Interpretation of Regulation 11-17, supra note 3.

9/ National Society of Professional Engineers v. United States, 435 U.S. 679 (1978).

10/ American Medical Association, 94 F.T.C. at 1014-15.

11/ United States v. Texas State Board of Public Accountancy, 464 F. Supp. 400 (W.D. Tex. 1978), aff'd as modified, 592 F.2d 919 (5th Cir.), cert. denied, 444 U.S. 925 (1979).

12/ You have requested the staff's views "on whether this regulation promotes any restrictive or anticompetitive practices." Accordingly, we do not comment on whether the Board of Architectural Examiners is immune under the state action doctrine to an antitrust action for its promulgation and enforcement of Regulation 11-17. These comments thus do not address the lawfulness of the regulation but solely its effects on consumer welfare.

13/ This was the process required by the rule condemned in the Professional Engineers case. See 435 U.S. at 692.

George L. Schroeder

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contest, it necessarily increases search costs. As a result, the dispersion of prices in the market will tend to be greater than in the absence of a prohibition on competitive bidding. ^{14/} In addition, such a prohibition may increase the average price paid by consumers for architectural services. ^{15/}

The Board's interpretation appears to link the competitive bidding prohibition to considerations of the public health and safety. Other private and public means that are less restrictive of competition, however, may be available to protect these interests. For example, construction projects are subject to building codes, which are specifically designed to protect the public health and safety. ^{16/} In addition, potential exposure to tort liability creates an incentive for all parties involved in a building project -- from the client, to the architect, to the builder -- to take actions necessary to protect public safety. Consequently, restrictions on competitive bidding may not be necessary to protect the public health and safety. As the Supreme Court has observed, the notion that price competition may threaten public safety is "nothing less than a frontal assault on the basic policy of the Sherman Act." ^{17/}

(b) The Ban on "Donating" Services

The Board's interpretation also prohibits architects from "offer[ing] to donate professional services with the intent of

^{14/} See generally G. Stigler, The Organization of Industry 171-87 (1968). The term dispersion refers to the scattering of prices above or below their average level.

^{15/} See Butters, Equilibrium Distributions of Sales and Advertising Prices, 44 Rev. Econ. Stud. 465 (1977).

^{16/} Moreover, Regulation 11-15(B)(3) of the Board requires architects who discover any decision by a client that violates applicable building codes or "materially affect[s] the safety to the public of the finished project" to take specific corrective actions, including notification of governmental authorities.

^{17/} National Society of Professional Engineers v. United States, 435 U.S. at 695. The Court added: "Exceptions to the Sherman Act for potentially dangerous goods and services would be tantamount to repeal of the statute. In our complex society, the number of items that may cause serious harm is almost endless -- automobiles, drugs, foods, aircraft components, heavy equipment, and countless others, cause serious harm to individuals if defectively made. The judiciary cannot indirectly protect the public against this harm by conferring monopoly privileges on the manufacturers." *Id.* at 695-96.

George L. Schroeder

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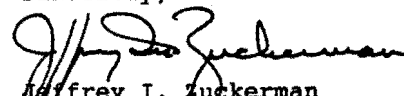
influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested." 18/ This prohibition is likely to have anticompetitive effects by reducing the ability of new entrants into the architectural services market to compete with incumbent firms.

New entrants into competitive markets for professional services often must engage in promotional activities to bring themselves to the attention of prospective clients. A new entrant into the architectural services market may be able to compete with more established firms by submitting to a potential client a preliminary design for a project on which the entrant is bidding. This service reduces the client's uncertainty as to the quality of the services offered by the new entrant and allows the new entrant to compete more effectively with incumbents in the market. A prohibition on the "donation" of services in order to secure a project increases the client's cost of uncertainty associated with the hiring of a new and untested entrant and thereby reduces the ability of new entrants to compete. The prohibition could also reduce competition in the quality of design by hampering a prospective client's ability to compare the design ideas of competing architects.

III. Conclusion

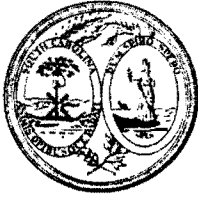
Regulation 11-17, as interpreted by the Board of Architectural Examiners, is likely to impede competition in the market for architectural services in South Carolina. Prohibitions on participation in competitive bidding similar to the one contained in Regulation 11-17 have been held to violate the federal antitrust laws because they injure consumers. The Council should consider the costs imposed by the regulation on South Carolina consumers in light of the questionable benefits offered by the regulation.

Sincerely,


Jeffrey I. Zuckerman
Director

18/ Administrative Interpretation, *supra* note 7. The interpretation permits architects to donate services solely for altruistic reasons.

Board of Architectural Examiners Comments



June 15, 1989

South Carolina
State Board of
Architectural
Examiners

Mr. George L. Schroeder
Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

RE: Sunset Audit Report - Board of
Architectural Examiners

Dear Mr. Schroeder:

Mr. Andy Young, Senior Auditor with your staff, has advised this office that the Council has reviewed and approved this Agency's Sunset Audit Report with only minor changes.

Our understanding is that Issue 2 - (page C-4, paragraph 2) was amended to eliminate reference to "local" building codes. The sentence now reads "unqualified architects would be more likely to design buildings out of compliance with Building Codes, which protect the public's safety". In addition, Mr. Young advises that on page C-5, paragraph 1, the last paragraph shows an increase in Board expenditures to \$125,769.00, correcting a typographical error in the preliminary draft.

Our understanding is that these are the only changes made by the Council.

As stated in our letter of May 24th, the Board accepts the Legislative Audit Council's Report and intends to promote the recommendations contained therein. The Board expects to initiate action removing Regulation 11-17 during the next legislative session. We are currently in the process of reviewing administrative procedures for the investigation of complaints. The Board intends to consider these procedures at its meeting scheduled in August.

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Page 2
Mr. George L. Schroeder
June 13, 1989

We sincerely appreciate the fair evaluation of our Board and its activities and would like to take this opportunity to thank you and your staff again for your support on behalf of the Board in its continued responsibilities.

Yours very truly,

STATE BOARD OF ARCHITECTURAL EXAMINERS

A handwritten signature in black ink, reading "Don E. Golightly". The signature is written in a cursive, flowing style. The first name "Don" is written with a large, looped "D". The last name "Golightly" is written with a large, looped "G" and a trailing flourish.

Don E. Golightly, AIA
Chairman

BPH/amd

Board of Examiners for Registered Environmental Sanitarians

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Introduction

After reviewing the operations and laws of the South Carolina State Board of Examiners for Registered Environmental Sanitarians, the Legislative Audit Council concludes that there is not a public need for title protection of environmental sanitarians and that the Board should be discontinued.

The Audit Council found no indication that public health, safety, or welfare would be endangered by the absence of title protection, or that the quality of services or practitioner competence would be lowered.

In addition, the Audit Council found no measurable economic or fiscal impact that would occur in the absence of title protection.

Recommendations

The General Assembly should consider allowing the Board of Examiners for Registered Environmental Sanitarians to terminate in accordance with Act 608 of 1978.

If the General Assembly does not terminate the Board of Examiners for Registered Environmental Sanitarians, the recommendations that follow should be implemented.

Background

The South Carolina State Board of Examiners for Registered Environmental Sanitarians was created by Act 785 of 1962, to "safeguard the life, health and property of the citizens of this State," and was amended to its present form in 1984.

The Board examines qualified applicants and issues certificates of registration to individuals who pass the examination. In addition, the Board investigates complaints concerning individuals, investigates and prosecutes violations of the chapter, requires and maintains continuing education credits for registrants, and has established a code of ethics which has not yet been promulgated.

State law requires that the Board be composed of six members appointed by the Governor, one of whom is the executive officer of the Department of Health and Environmental Control (DHEC) or his designee, three registered environmental sanitarians, and two public members.

Section 40-61-10 of the South Carolina Code of Laws defines "environmental sanitarian" as a person "trained and qualified to carry out educational, inspectional, and supervisory duties in environmental health and control programs and who is registered." The Code further defines "environmental health and control programs" as "programs for achieving and maintaining conditions to ensure an environment that is conducive to health, comfort, safety, and well-being and provides adequate protection to the public."

The function of the Board is to restrict the use of title only, as opposed to restricting practice in the field, and the scope of the Board's regulatory duties apply only to "registered environmental sanitarians" or those seeking to become registered. Registration is not required in order to perform the duties of a registered environmental sanitarian.

Currently, 290 environmental sanitarians are registered with the Board. Of the 290, approximately 254 or 88%, are employed by DHEC. Employees of DHEC conduct site evaluations and inspections of individual sewage treatment and disposal systems, food service facilities, vectors, product safety and injury control, dairy foods, bottling plants, and rabies control, among other functions.

Since 1978, five southeastern states, Alabama, Florida, Georgia, Mississippi and Virginia, have abolished regulatory boards for the registration of environmental sanitarians. Louisiana's Board of Examiners for Sanitarians is presently expecting termination.

Four southeastern states, Kentucky, North Carolina, South Carolina and Tennessee presently have state boards for the registration of environmental sanitarians. However, Kentucky and North Carolina do not conduct periodic reviews to determine if regulation of professions should be continued (see p. D-14).

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Examiners for Registered Environmental Sanitarians has no direct control over the cost of environmental health services to the general public. The Board does impose costs on registered environmental sanitarians through examination fees, license renewal fees and continuing education requirements; however, these costs do not significantly affect the general public.

Solicitation

Costs to the public may be affected by the fact that §40-61-90(14) of the South Carolina Code prohibits registered sanitarians from using solicitors to obtain patronage. According to the Federal Trade Commission:

Competition among members of an occupation in the solicitation of business lowers the search costs for consumers who may be interested in procuring the services offered by that occupation. Solicitation is a form of advertising, and restricting it may lead to higher prices.

When the truthful, nondeceptive advertising of the services offered by registered environmental sanitarians is unnecessarily restricted, competition and public awareness are reduced, and price and quality comparison becomes more time-consuming and inconvenient for consumers. Reduced competition often results in higher prices and lower quality standards.

Recommendation

The General Assembly should consider amending §40-61-90(14) of the South Carolina Code of Laws to allow truthful, nondeceptive, noncoercive solicitation.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Audit Council determined that there would be no measurable economic, fiscal or other impact in the absence of the South Carolina Board of Examiners for Registered Environmental Sanitarians. Practitioners would no longer be subject to fees, and the number of persons permitted to enter the field would not change, as the statutes governing the Board do not prohibit individuals from working in the environmental health field without registration.

Manner of Regulation

Section 40-61-120 of the South Carolina Code of Laws restricts the use of title only, as opposed to restricting practice in the field, and the scope of the Board's regulatory duties apply only to "registered environmental sanitarians" or those seeking to become registered. Therefore, registration is not required in order to perform the duties of a registered environmental sanitarian.

The South Carolina Department of Health and Environmental Control (DHEC) requires certain employees in its Bureau of Environmental Health to be registered sanitarians. Environmental Quality Manager I's (EQM I's) at DHEC perform essentially the same fieldwork duties as EQM II's. However, individuals who fill the positions of EQM II and above must be registered environmental sanitarians in accordance with their job descriptions.

The major difference between an EQM I and an EQM II appears to be that an EQM II serves in a larger supervisory capacity and has experience of one more year than an EQM I. An EQM I may still serve in a supervisory capacity.

Public Health, Safety, and Welfare Issues

There would be no measurable increase in the risk to public health, safety and welfare from the industry if deregulation occurred.

The Department of Health and Environmental Control employs sanitarians to conduct site evaluations and inspections of individual sewage treatment and disposal systems, food service facilities, vectors, product safety and injury control, dairy foods, bottling plants, and rabies control, among other functions.

The Audit Council examined the Board's official roster and found that of 290 registered sanitarians in the state, the majority registered, 254 (16 are retired) or 88%, are or were employed by DHEC. The 36 or 12% remaining are non-DHEC employees.

The Department of Health and Environmental Control by statute is responsible for regulating and maintaining public health in South Carolina. Any public protection achieved through licensure could be as effectively achieved through stringent hiring standards. Additionally, all employers are required to meet DHEC health standards, and could establish hiring criteria and control to ensure standards of quality are met.

The Audit Council was unable to find a relationship between the existence of the Board and the quality of environmental health services provided.

**Economic and Fiscal
Impacts of Deregulation**

There are no readily distinguishable economic or fiscal impacts that would occur if the industry was deregulated.

Because the majority of registered sanitarians are employed by DHEC, the cost of services would not directly affect the consumer. The Council found no evidence that there would be any change in the cost of services.

**Quality of Services or
Practitioner Competence
Issues**

The quality of services or practitioner competence is not likely to be lowered.

In accordance with the South Carolina Code of Laws, the Department of Health and Environmental Control is responsible for enforcing health and environmental regulations in this state. Private industries as well as state agencies must meet

governmental health and sanitation codes. All employers can control the quality of services through education and experience requirements in related job descriptions.

The Department of Health and Environmental Control, which as noted employs approximately 88% of the licensees, has for many years provided its employees with the continuing education required to keep abreast of the profession. If desired, DHEC could require employees to be registered through another organization (discussed below) and save the cost of state regulation.

Alternatives

If an individual desires, registration is available through the National Environmental Health Association (NEHA), a private nonprofit organization, which registers sanitarians nationally. The examination is administered by qualified proctors, using the same exam used by South Carolina.

The NEHA recently implemented a continuing education program and takes complaints concerning its national registrants. Any complaints concerning individuals not registered nationally are referred to the proper state agency and/or board. The NEHA also has a code of ethics among its members.

The NEHA currently restricts national registration and membership in its association by requiring that all individuals that sit for its exam hold a bachelor's or master's degree.

Recommendation

The General Assembly should consider allowing the Board of Examiners for Registered Environmental Sanitarians to terminate in accordance with Act 608 of 1978.

Determine the overall costs, including manpower, of the agency under review.

The Board of Examiners for Registered Environmental Sanitarians receives an annual appropriation from the General Assembly. It also collects revenues through application fees, license fees, and exam fees which are deposited in the state's General Fund. In FY 87-88, revenues were equal to 158% of appropriations, thus exceeding a requirement of the Appropriation Act that revenues be equal to 115% of appropriations.

From FY 84-85 through FY 88-89, the Board's expenditures increased from \$4,984 to an estimated \$6,071. Registrants have increased from 282 to 290 over the same years. The examination and initial license fees have increased from \$70 per year in FY 84-85 to a current rate of \$75 (see p. D-13). The largest portion of the expenditure increase resulted from increases in supplies and expenditures and the next largest from increases in travel.

The Board employs no staff. The Board's administrative and clerical functions are performed by a private firm contracted with the Board.

Table 3D.1: Source of Revenues, Expenditures, and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
License Fee	•	•	\$5,540	\$6,480	\$7,121
Exam Fees ¹	5,454	5,754	150	1,425	1,200
Application Fees ²	•	•	1,275	•	•
Total	\$5,454	\$5,754	\$6,965	\$7,905	\$8,321
Expenditures:					
Personal Services	\$1,045	\$315	\$245	\$280	\$280
Employee Benefits	121	•	•	•	•
Other Operating Expenses	3,818	5,286	4,268	4,717	5,791
Total	\$4,984	\$5,601	\$4,513	\$4,997	\$6,071
State Appropriation	\$4,984	\$5,601	\$4,513	\$4,997	\$6,071

¹Prior to FY 86-87, the Board did not differentiate between type of revenue earned. The Board began separating fees by category following an audit by the Office of the State Auditor, which cited this lack of differentiation as a weakness in its report for the period ended June 30, 1986.

²After FY 86-87, the application fee was considered a part of the examination fee.
Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

During the Council's review, some areas were noted where the Board's operations could be improved. Also, some changes are needed in Board membership. The Office of the State Auditor has reported that for FY 85-86, the Board had inadequate accounting controls. A State Auditor report for FY 86-87 is expected to be published in late FY 88-89.

Board Membership

The Board of Examiners for Registered Environmental Sanitarians has a six-member board. To reduce the chances of tie votes, a board should have an odd number of members. Also, during our review, we noted that appointments to the Board have not been made in a timely manner. At present, only three members are serving, making a quorum difficult. The four-year term expired two years ago for two of the remaining members, and they are remaining only until new board members are appointed. The third member's term recently expired, and a new appointment has not been made. The other three Board members tendered resignations to the Governor in August 1988 and no longer serve in any capacity.

Appointments to the Board are beyond the control of the Board, which has made requests to have replacement members appointed.

Recommendations

The General Assembly should consider amending §40-61-20 of the South Carolina Code of Laws to require an odd number of members on the Board of Examiners for Registered Environmental Sanitarians.

Efforts should be made to have new Board members appointed in a more timely manner when members' terms expire or vacancies occur.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board of Registered Environmental Sanitarians conducts meetings quarterly. Public announcements of meetings are posted outside the door of the Board's office. Additionally, local news media are notified of meetings.

In 1984, §40-61-20 of the South Carolina Code of Laws was amended to allow for two public members. There are no restrictions on the functions of the public members.

In 1983, the Council found the Board of Registered Environmental Sanitarians did not have public members and did not publish notices of its meetings. Our current review shows these concerns to be resolved.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Board does not duplicate the services, functions and programs of any other state, federal or local government agency. However, The National Environmental Health Association (NEHA) examines and registers sanitarians in the environmental health field, using the same examination as the State Board.

The NEHA also has a continuing education program, a complaints process and a code of ethics among members.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Board has reported in the South Carolina Occupational and Professional Licensing Board Annual Report only one formal complaint filed with the Board since FY 85-86. In this case a formal Hearing and Rule to Show Cause was held and the Board found the licensee to have violated the law. The licensee voluntarily returned his license.

In 1983, the Audit Council noted the Board had no formal procedures for recording and handling complaints. Currently, when the Board receives complaints, the complainant is asked to formalize the concerns in writing. No log is maintained of complaints. According to the Board, there are no files that contain formal complaints other than the one referenced above.

Recommendation

The Board should establish formal written procedures for recording and handling complaints to include a log of all complaints and the disposition of each.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Examiners for Registered Environmental Sanitarians was created under and is subject to South Carolina laws and regulations. The Audit Council found no evidence that the Board has violated any law.

In 1983, the Audit Council noted the Board's statutes were vague and out-of-date, and the Board charged examination fees in excess of its \$25 statutory limit. Our current review indicates the Board updated and strengthened its regulations in 1984 and struck the fee limitation.

Schedule of Fees FY 88-89

	Fee
Renewal Fee	\$20
Examination Fee ¹	75
Late Fee	10

¹Includes first year of licensing.

Source: Board of Examiners for Registered Environmental Sanitarians

Survey of Southeastern States Registered Environmental Sanitarian Boards

States	Regulatory Board	
Alabama	No	(Sunsetted 1980)
Florida	No	(Sunsetted 1978)
Georgia	No	(Sunsetted 1986)
Kentucky	Yes	(No Sunset Legislation)
Louisiana	Yes	(Expecting Sunset)
Mississippi	No	(Sunsetted 1982)
North Carolina	Yes	(No Sunset Legislation)
South Carolina	Yes	
Tennessee	Yes	
Virginia	No	(Sunsetted 1984)

Source: Prepared by the Legislative Audit Council, April 24, 1989.

Board of Examiners for Registered Environmental Sanitarians Comments

STATE OF SOUTH CAROLINA

Board of Examiners for Registered Sanitarians



June 1, 1989

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

On behalf of the Board Members, let me thank you for allowing us to input on your review of this Board.

We disagree with your conclusion to terminate this Board but we are in agreement with your recommendations for changes in our 1984 legislation. As I noted in my correspondence to you of May 19, 1989, changes in the 1984 amendments before their final passage are specific areas you are now questioning ie: Solicitation as noted in Section 40-61-90 (14) of the South Carolina Code.

The Board is willing to prepare for legislative review the necessary changes to the Code. Amending the Code to reflect your recommendations would also encourage private practice within the profession.

From a fiscal point of view, the Board has lapsed monies to the General Fund each of the last six years and will again this year. The Board is operating without cost to the taxpayers.

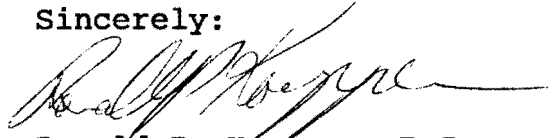
Finally there is the question of impact. During our State's current emphasis on development would it be more reasonable to terminate the regulation of an environmentally orientated profession or would it be more reasonable to broaden that regulation? For the benefit of this State the Board would prefer the latter.

Mr. George L. Schroeder
Page Two
June 1, 1989

Would there be an impact on the registrants if the Board was terminated? That question should be asked of the registrants.

In conclusion, your recommended changes would be of benefit to the registrants and the citizens of this State.

Sincerely:

A handwritten signature in dark ink, appearing to read 'Ronald P. Koeppen', with a long horizontal flourish extending to the right.

Ronald P. Koeppen, R.S.
Chairman

cc: Mr. Gordon
Mr. Hafner

Board of Social Work Examiners

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Introduction

After reviewing the laws and operations of the Board of Social Work Examiners, the Legislative Audit Council concludes that there is a net public benefit from title protection of social workers provided by the Board. In addition, the Audit Council found several areas in need of improvement.

Background

The Board of Social Work Examiners was created in its present form in 1988. The primary function of the Board is to certify applicants who meet the qualifications listed below as licensed social workers:

- **Licensed Baccalaureate Social Worker**--This title requires applicants to have a bachelor's degree in social work or social welfare, or in sociology or psychology with training substantially equivalent to a social work or social welfare program. Applicants must also pass an examination.
- **Licensed Master Social Worker**--This title requires applicants to have a master's or doctoral degree in social work. Applicants must also pass an examination.
- **Licensed Independent Social Worker**--This title requires applicants to have a master's or doctoral degree in social work, post graduate social work education, and two years of professionally supervised experience. Applicants must also pass an examination.

For approximately the first year of the new Board's operation, applicants who could document that they were presently practicing social work in South Carolina, "utilizing professional social work knowledge and methods," could be licensed without meeting the above standards. As of May 1989, the Board had licensed 1,408 social workers under these less stringent "grandparenting" provisions with more than 1,300 applications pending.

Prior to the 1988 reforms, the agency was entitled the *Board of Social Worker Registration*. The function of the former organization was to certify persons as "registered social workers."

The minimum requirements for registration included a master's degree in social work.

State law requires that the Board be composed of six licensed social workers and one lay member. All Board members are appointed by the Governor with the advice and consent of the state Senate. The Board is responsible for examining applicants for licensure as social workers, investigating complaints, and investigating and prosecuting violations of South Carolina social work laws and regulations. Currently, seven other southeastern states regulate the practice of social work or the social worker profession in various manners.

Social Work Definition

Section 40-63-60 of the South Carolina Code of Laws defines "social work practice," in part, as:

. . . service and action to effect changes in human behavior, a person's emotional responses, and the social conditions of individuals, families, groups, organizations, and communities.

Social work functions are broad and encompass many areas, including:

- Providing or referring needy individuals to resources, such as food, shelter, medical services, and adoption services.
- Investigating cases of abuse against children and adults.
- Providing mental health care to individuals, families, and groups.

Social work is performed in settings such as social service agencies, hospitals, prisons, nursing homes, and private counseling practices.

Scope of Regulation

Both before and since the 1988 reforms, state law has not prohibited any person from performing social work, regardless of whether the person was credentialed (registered or licensed) by the Board. State law has only restricted the use of certain job titles indicating that individuals are social workers.

Before the 1988 reforms, it was unlawful to use the title "registered social worker" unless an individual met minimum standards and was registered by the Board. Since the 1988 reforms, it has been unlawful to:

... use the title 'Social Worker,' 'Licensed Baccalaureate Social Worker,' 'Licensed Master Social Worker,' or 'Licensed Independent Social Worker,' or to use the title Social Worker within any other professional title. ...

unless an individual has met minimum standards and is licensed by the Board. The credentials issued by the Board only indicate that individuals have met certain standards. They do not give individuals any more authority to perform social work than those without credentials or those with a lower category of credential.

This form of regulation, which only restricts the use of certain titles but does not prohibit any activities among those without credentials, is referred to as a "title protection." In general, title protection provides information to consumers, communicating that those who call themselves by the title have met certain standards. Whether the public needs title protection for social workers is addressed under sunset issue two in this report (see p. E-7).

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Social Work Examiners has no direct control over the prices charged or wages received by social workers. The Board does impose regulation costs on social workers through license fees. However, it is not likely that these costs significantly affect the price of services provided by social workers.

Because the pool of individuals permitted to call themselves "social workers" has been decreased by licensing, in the long term, a shortage of social workers could develop at current real wage levels. In the short term, this shortage is minimized by grandparented licensure. Increased enrollment at college and university schools of social work could offset a long-term shortage. This increased enrollment could result from greater student interest in social work, but it could also require higher real wages for social workers. Thus, licensing has the potential to indirectly increase the cost of services provided by social workers.

It is important to note, however, that state law does not restrict the practice of social work but only restricts the use of the title "social worker." In the event of a shortage of social workers at current real wages, employers and clients maintain the option of having social work provided by individuals without licenses at lower cost. Furthermore, such a shortage would develop only if employers and clients placed greater value on social work provided by persons with licenses than by those without licenses.

Limits on Competition

The following sections of state law may result in higher prices for the services provided by social workers by placing unnecessary restrictions on obtaining a social worker license and by restricting advertising.

Out-of-State Applicants

Section 40-63-70 requires that all applicants for licensure as social workers be residents of or employed in South Carolina. It is questionable as to how this restriction to entry of the profession protects the public. In fact, the restriction has the

potential of reducing the supply of social workers by hindering their movement into South Carolina.

Other professions do not restrict entry in this manner. For example, the South Carolina Board of Medical Examiners has no such restriction on the licensure of physicians. Applicants for licensure as physicians are not required to be residents of or employed in South Carolina. Physician applicants are also not required to show any intent to reside or be employed in South Carolina.

On a related issue, in 1985, the United States Supreme Court ruled that a residency requirement for licensure as an attorney in the state of New Hampshire was unconstitutional.

Recommendation

The General Assembly may wish to consider amending §40-63-70 of the South Carolina Code of Laws to remove the requirement that applicants for social worker licensure be residents of or employed in the state.

Grandparented Licensure

For approximately the first year of the new Board's operation, which began in May 1988, applicants could be licensed as social workers without meeting education and examination requirements which would later apply. All applicants who could show that they were presently practicing social work in South Carolina, "utilizing professional social work knowledge and methods," were eligible for grandparented licensure. However, §40-63-75, which contains the grandparenting provisions, does not treat applicants consistently.

For example, §40-63-75 stipulates that state employees had from May 29, 1988 until July 1, 1989 to apply for grandparented licensure. All other persons in the state had from May 29, 1988 until May 29, 1989 to apply. The Audit Council found no rationale for treating persons employed by the state differently than persons not employed by the state.

Section 40-63-75 also stipulates that state employees licensed under grandparenting provisions, on or before July 1, 1989, may not be denied relicensure:

... so long as they remain employed by or with the State, and so long as they comply with all the other requirements of this chapter, excepting [the requirements for non-grandparented licensure].

However, this part of state law potentially could be used to deny relicensure to state government social workers who leave state employment. There is no similar restriction which applies to persons who are not state employees. As in the case of application deadlines, the Audit Council found no rationale for treating persons employed by the state differently than persons not employed by the state.

Recommendation

The General Assembly may wish to consider amending §40-63-75 of the South Carolina Code of Laws so that its requirements and restrictions do not vary based on an applicant or licensee's place of employment.

Solicitors

Section 40-61-110(14) prohibits social workers from "... using a solicitor or peddlers, cappers, or steerers to obtain patronage." FTC analysts noted that this restriction on advertising "... may lead to higher prices." Solicitation which is truthful, nondeceptive, and noncoercive can provide beneficial information to consumers.

Recommendation

The General Assembly may wish to consider amending the South Carolina Code of Laws to delete §40-61-110(14).

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Audit Council found limited economic and fiscal impact that would occur in the absence of the title protection of the social worker profession. Licensees would no longer be subject to fees. However, the number of persons permitted to practice social work would not change, since title protection does not establish any barriers to performing social work.

Based on the following evidence of other impacts of removing title protection, the Audit Council recommends that title protection be continued.

Public Harm

To determine whether title protection protects the public from harm, the Audit Council reviewed:

- whether incompetent social work is more likely to cause public harm than competent social work;
- whether license requirements increase the likelihood of competence at social work;
- whether the information provided by title protection is useful to the public; and
- whether independent investigations of social worker misconduct are beneficial to the public.

Effects of Incompetence

The Audit Council found no statistical analysis which assessed the likelihood that incompetent social work would result in public harm. However, the Audit Council did find evidence that incompetent social work may be associated with public harm. In a 1985 review of the South Carolina Department of Social Services, the Audit Council documented cases where inadequate performance of child abuse investigations was followed by harm to clients. In addition, since social workers are responsible for treating mental health disorders, protecting the physical and mental well-being of abuse victims, and

providing other resources for needy clients, logic would indicate that incompetent performance of these functions may harm the mental and/or physical health of clients.

Education and Competence

Social worker licensure in South Carolina requires education in social work. The implication of this requirement is that those with social work education will, on average, be more competent at social work. However, the Audit Council found only limited research attempting to quantify the relationship between social work education and competence at social work.

A 1987 study by the consulting firm of Booz-Allen and Hamilton, prepared for the Department of Human Resources of the state of Maryland, found that among experienced employees:

... holding an MSW appears to be the best predictor of overall performance in social work [while] ... [t]he BSW (i.e., BA/BS in social work) degree was not found to predict overall performance.

However, the report also stated:

... while it appears that MSWs are, on average, performing more effectively than employees in other categories, this analysis does not imply that other employees are not performing effectively.

When supervisors were asked to rate the adequacy of preparation of hypothetical new employees, those with MSWs were judged to be more prepared than those with BSWs. Those with other bachelors degrees were judged to be not prepared without job experience or an "extraordinary amount of supervision and/or training."

Although, the results of this study are useful, it may not be prudent to draw definitive conclusions on such a complex question based on limited research.

Consumer Information

Title protection provides the most benefits to consumers who are in a position to select their provider of social work. When presented with many social work providers to choose from, a consumer's search-time may be reduced through the knowledge that all persons with the "social worker" title have met specific minimum standards.

In some environments, however, consumers do not typically select their provider of social work. Examples of these environments include abuse investigations, prisons, schools, and hospitals. When consumers do not choose their provider of social work, the information benefits of title protection are diminished.

Investigations of Social Workers

Another aspect of title protection is the Board's role of protecting the public by investigating misconduct and incompetence among licensed social workers. An investigation conducted by the Board can be more objective than an in-house investigation conducted by an employer.

In addition, unlike the benefits of consumer information, Board investigations can serve the public in various environments, regardless of whether clients have selected their social workers. For example, misconduct by a state child abuse investigator, who is licensed as a social worker, can be investigated by the Board although the client did not select the social worker.

Determine the overall costs, including manpower, of the agency under review.

The Board of Social Work Examiners receives an annual appropriation from the General Assembly. It also collects revenues through fees, which are deposited in the General Fund of the state. In FY 87-88, revenues were equal to 142% of appropriations, thus exceeding a requirement of that year's Appropriations Act that revenues be equal to 115% of appropriations.

From FY 87-88 through FY 88-89, the Board's expenditures increased from \$5,868 to an estimated \$53,895. This increase followed the agency's transition from the Board of Social Worker Registration to the Board of Social Work Examiners. Annual license fees have been increased from \$10 per year in FY 87-88 to a current rate of between \$40 and \$50 per year (see p. E-16). The largest portion of the expenditure increase came from increased payments to a private firm, which performs the Board's administrative and clerical functions.

Table 3E.1: Source of Revenues, Expenditures, and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
License Fees	\$2,895	\$2,860	\$3,320	\$5,725	\$60,600
Application Fees	1,525	970	2,610	2,630	1,100
Miscellaneous	978	*	626	173	400
Total	\$5,398	\$3,830	\$6,556	\$8,528	\$62,100
Expenditures:					
Contractual Services	\$2,675	\$3,028	\$3,403	\$4,198	\$42,561
Other Operating Expenses	1,918	1,245	1,862	1,624	6,050
Travel	805	543	492	46	5,284
Total	\$5,398	\$4,816	\$5,757	\$5,868	\$53,895
State Appropriation	\$4,930	\$4,930	\$6,000	\$6,000	\$53,895

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Office of the State Auditor has reported that for fiscal years 82-83, 83-84, 84-85, and 85-86, the Board had inadequate accounting controls. A State Auditor report for FY 86-87 is expected to be published in late FY 88-89. In addition, the following statute negatively affects the clarity and consistency of the Board's licensure requirements.

Exemptions

Section 40-63-130 of the South Carolina Code of Laws lists categories of persons who are exempt from certain social work restrictions. As discussed below, all of these exemptions except one are redundant. One exemption, as interpreted by the Board, is not redundant. However, it is unnecessary.

Although state law restricts the use of the title "social worker" to persons who are licensed, it does not prohibit anyone from practicing social work. Redundantly, however, §40-63-130 notes that nothing in state law prevents physicians, nurses, teachers, psychologists, attorneys, volunteers, social work students, persons licensed out-of-state, and persons with temporary licenses from practicing social work. Exempting persons from a prohibition which does not exist may mislead the public into believing the prohibition does exist.

Section 40-63-130 also has an exemption pertaining to hospital employees. Its need is questionable. This exemption states, in part, "no regular employee of a licensed hospital in this State is required to be licensed as a condition of employment." The Board has interpreted the above as an exemption from the state law that requires all persons using the title "social worker" to have a license. However, the Board could provide no rationale as to why hospital employees should be subject to this exemption. The Audit Council found no evidence of a unique aspect of hospital social work which would justify the exemption.

Recommendation

The General Assembly may wish to consider amending the South Carolina Code of Laws to remove §40-63-130.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

To encourage public participation, state law requires that one of the seven Board members be other than a social worker. The Board conducts public meetings approximately once per month. Public announcements are posted outside the door of the Board's meeting place. In addition, local media are notified of meetings.

In 1983, the Audit Council noted that the Board did not have its phone number listed in the state government or City of Columbia phone directories. Currently, however, both publications list the Board's phone number.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Audit Council did not find evidence that the Board of Social Work Examiners duplicates the services, functions, or programs of any other state, federal, or local government agency. However, there are related professions which provide mental health services that are regulated by separate state agencies. They include psychiatrists, psychologists, counselors, and marital and family therapists. Although these professions may overlap with social workers in certain areas, the education of social workers is a separate program within colleges and universities and focuses on the needs of clients within the context of the community. The Board of Social Work Examiners is the only entity responsible for licensing social workers in South Carolina.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Board of Social Worker Registration, the Board's name prior to May 1988, never received a complaint, according to Board officials. The Board of Social Work Examiners received five complaints in calendar year 1988. The Audit Council reviewed all of these cases. They included two allegations of falsified credentials, two allegations of incompetence, and one allegation of misconduct.

Complaint investigations are conducted by a Board member who has completed an investigation training program conducted by The National Clearinghouse on Licensure, Enforcement, and Regulation of The Council of State Governments. The five investigations reviewed by the Audit Council were conducted in a thorough manner. The Board does not, however, maintain a log of complaints listing the date received, the complainant, the nature of the complaint, and its resolution. As the volume of complaints increases, such a log would assist the Board in monitoring investigations. Also, as the volume of complaints increases, the Board may need to consider hiring a part-time investigator or sharing one with another health-related board.

During the course of this review, the above Board member developed written procedures for the investigation of complaints. Formal written procedures help ensure that complaints are investigated efficiently and consistently.

Recommendation

The Board of Social Work Examiners should develop a log for tracking complaints.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Social Work Examiners was created under and is subject to South Carolina law and regulations. The Audit Council found no applicable federal and local statutes. However, a contract violation was found.

Subcontract

Since August 1987, the South Carolina Division of General Services has contracted with a private firm to perform administrative and clerical functions for the Board. The contract, which is funded with the Board's appropriation, requires that all subcontractors be approved by the state. Since the contract is with the Division of General Services, General Services is the agency from which approval is required.

In September 1988, this private firm began subcontracting with a Board member's spouse to assist the firm in fulfilling the contract with the Board. The private firm neither requested nor received approval for this subcontract from the Division of General Services. The Board reports that it discussed and did not object to this subcontract.

The Board member's spouse assists the private firm in reviewing applications for grandparented social worker licenses. The private firm's records indicate that from September 1988 through February 1989, the Board member's spouse worked approximately 245 billable hours at a compensation rate of \$12.50 per hour, for a total exceeding \$3,000.

Regardless of a contract violation, when a Board member's spouse indirectly receives Board funds, the appearance of a conflict of interest is presented to the public. This appearance exists even when the primary contractor decides to subcontract with the spouse after the primary contract was awarded. For example, being a Board member's spouse could give the subcontractor an advantage in getting the subcontract. Also, decisions to award additional contracts to the primary contractor could be influenced by the potential for monetary gain by the Board member's spouse, or by the Board member's gratitude for past monetary gain. And, although an actual conflict of interest will not always exist in cases like this, the appearance of such a conflict may.

Schedule of Fees FY 88-89

	Fee
Initial and Annual/Renewal Fees	
Baccalaureate Social Workers	\$40
Master Social Workers	45
Independent Social Workers	50

Source: Board of Social Work Examiners

Board of Social Work Examiners Comments

STATE OF SOUTH CAROLINA



BOARD OF SOCIAL WORK EXAMINERS
P. O. BOX 1083
COLUMBIA, SOUTH CAROLINA 29202
(803) 254-3661

June 5, 1989

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The members of the Board, our administrator and our legal counsel have reviewed the confidential draft report of the sunset review.

The Board agrees with your conclusion "that there is a net public benefit from title protection of social workers as provided by the Board."

We would like to update the Background statement on Page E-1 by stating that we have now licensed 1408 social workers and have more than 1500 additional applications pending.

Likewise, on Page E-2, we wish to point out that every southeastern state is among the 49 jurisdictions which now have some form of legal regulation of social workers. Only Indiana, Missouri, New Jersey and Wisconsin lack such regulation.

Regarding Page E-4, we believe that it is purely speculative to suggest that licensing has the potential to indirectly increase the cost of services by causing a shortage of social workers. There is no empirical evidence to support this opinion. The Board believes that students interested in the social work field will increasingly become social work majors at accredited schools since such education is increasingly required for licensure and for employment in a wide range of agencies. On the cost matter, the Board also believes that licensure of social workers, especially at the LMSW and LISW levels, will increase competition among providers of mental health services and thus benefit the consuming public. Licensure will enable health insurers to pay for the services of social workers, as well as for those of psychologists and psychiatrists which cost more. Employer health insurance programs will also benefit as their plans recognize the services of licensed social workers.

Regarding Pages E-4 and E-5, the Board questions how the supply of social workers in South Carolina will be reduced by the statutory requirement that an applicant be a resident of or employed in the state, since only social workers who work in South Carolina would need a South Carolina license to practice anyway. There would be no point in residents of other states who do not practice in South Carolina obtaining South Carolina licenses, and licensing and regulating them could pose useless administrative and fiscal burdens on the Board.

Regarding Page E-5, the Board agrees that there appears to be no justifiable reason for having separate grandparenting deadlines for state employees and for those who do not work for the state. This difference resulted from legislative merging of two different bills.

Regarding Page E-6, the Board agrees with the recommendation that Section 40-61-110 (14) might be deleted by action of the General Assembly.

Regarding Page E-11, the comments made in the management letters by the Office of the State Auditor have each been corrected and do not appear in subsequent years reports. In light of the fact that the auditor's report is received near the end of the second fiscal year after the year in question, the changes to the "inadequate accounting controls" have been implemented immediately upon receipt of the report.

Regarding Page E-11, the Board concurs with the recommendation that there should be no exemption for employees of hospitals. All persons who use the title "Social Worker" should be covered by a title protection act. It was the lobbying by hospital interests which brought about this exemption in the statute. It is noteworthy that, as of the May 9 Board meeting, 164 hospital social workers have been approved for licensure. Several recent help wanted ads for hospital social workers have specified that the applicant must be licensed or licensed eligible. Accreditation and reimbursement factors are obviously involved.

Regarding Page E-12, the Board points out that a public information campaign has included press releases, mailings to state agencies and voluntary organizations, a newsletter, and speaking engagements at numerous social work meetings around the state. Furthermore, the principal membership organization in the state (the South Carolina Chapter of the National Association of Social Workers) sends an observer to each meeting of the Board.

Regarding Page E-14, a complaint log has now been instituted. The Board also points out that the Board member who investigates complaints is a Certified National Investigator after completing the training program conducted by the Clearinghouse on Licensure, Enforcement and Regulation of the Council of State Governments.

Regarding Page E-15, the Board agrees that the private contractor's employment of a Board member's spouse for certain piece work may have constituted a minor, technical violation of the contract with the Division of General Services, as the piece-work was arguably performed in the manner of a subcontractor rather than an employee. Upon the Legislative Audit Council's

raising of this issue, the Board requested the Division of General Services to amend the contract with the management firm to allow subcontract decisions without prior approval.

Furthermore, the Board agrees that there can be the appearance of a potential conflict of interest anytime any board member or board member's spouse receives board funds, even indirectly. The Board maintains, however, that there clearly has been no actual conflict of interest. Nor, under the facts of this matter has there ever been an appearance of an actual conflict of interest.

The contractor utilizes individuals to do piece work from time to time to satisfy the Board's needs in such things as preparation of newsletters or for special mailings. When the Board finalized the licensing requirements, it became clear that the contractor did not have a person on staff with the requisite extensive knowledge of social work education and practice, and the ability to evaluate transcripts and reports on employment and supervision. Fortunately, a person with the requisite knowledge and experience was available. Unfortunately, the qualified person was married to a Board Member; but no other person remotely as qualified was known or readily discoverable. The Board member had served for more than four years as the first Executive Director of the American Association of State Social Work Boards (AASSWB), made up of state boards from around the country. When Connecticut and Vermont passed their social work regulatory acts in 1985, neither statute provided for a social work board. The appropriate agencies of these state governments therefore contracted with the AASSWB to process their applications. With the approval of the AASSWB Executive Committee and their legal counsel, this work was undertaken on a contract basis by the spouse of the Executive Director. The spouse had processed more than 3000 applications for Connecticut and just under 300 for Vermont.

The Contractor presented the above information to the Assistant Attorney General assigned to the Board, who advised that employment of the Board Member's spouse by the contractor did not appear to pose a conflict of interest, and, in light of the rarity of qualifications and experience possessed by the spouse and the difficulty, if not impossibility, of finding another person remotely as qualified and situated, the minimal appearance of a potential conflict of interest involved did not suggest disqualifying this spouse. However, in the concerned Board Member's absence, the Assistant Attorney General and contractor fully informed the remainder of the Board, which had no objection to the spouse working for the contractor. Finally it is clear that there has been no violation of law, and the most relevant statutes, Sections 8-13-410 and 480 of the Code of Laws of South Carolina, as amended, and the State Ethics Commission Opinions interpreting them suggest that this arrangement is ethically proper as well as lawful. Therefore, the importance, scarcity and convenience of the spouse's qualifications to the proper review of the applications far outweighed the appearance of a possible conflict of interest.

In light of the above the Board respectfully suggests that the last paragraph of Page E-15 is incomplete and misleading or purely speculative, and should be deleted or altered to include the above facts.

Mr. G. L. Schroeder
June 5, 1989 - Page 4

In conclusion, the Board expresses its appreciation for the opportunity to comment on the report and hopes that its response will be included in the final report.

Sincerely,

A handwritten signature in cursive script that reads "David Jeffreys".

David Jeffreys, Ph.D., LMSW
President

Cemetery Board

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Introduction

After reviewing its laws and operations, the Legislative Audit Council concludes that there is a public need for the regulation of perpetual care cemeteries, and that the Cemetery Board should be continued. In most areas, the Board has operated efficiently and effectively. However, the Board needs to review the requirements for trust funds.

Background

The Cemetery Board was created by Act 704 of 1954. The Board is empowered to license perpetual care cemeteries. Perpetual care means the providing of care and maintenance of cemetery grounds indefinitely. In addition, the Board is charged with monitoring trust funds set up by cemeteries for the care and maintenance of grave sites and cemetery merchandise sold on a pre-need basis. The Board also performs inspections and handles complaints. As of January 1989, there were 121 licensed perpetual care cemeteries in South Carolina.

The Board is composed of seven members. Six members are appointed by the governor, including two public members, two owners or managers of cemeteries, and two selected from four nominees submitted by the South Carolina Cemetery Association. The Secretary of State is the ex officio chairman of the Board.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Cemetery Board has no direct control over prices charged to consumers. However, provisions in the law requiring the creation of a perpetual care trust fund and ownership of a minimum of 30 acres of land prior to being licensed may affect the prices charged consumers.

State law requires that in order to become a licensed perpetual care cemetery in South Carolina, the cemetery must establish a care and maintenance trust fund to provide for perpetual care of the grave sight. An initial deposit by the cemetery of \$15,000 is required. In addition, the greater of \$20 or 10% of the sale price of a grave space and 5% or \$50 of the sale price of a mausoleum crypt are required to be deposited into the trust fund. Further, 8 cents per square inch for each grave marker is required to go into the trust fund. The 121 licensed perpetual care cemeteries in South Carolina have over \$13.2 million in these trust funds.

State law also requires that a perpetual care cemetery have at least 30 acres of unencumbered land (15 acres in counties with populations of less than 35,000). Further, two acres must be developed and ready for burial prior to licensure.

Since the cemetery must provide maintenance for eternity, the cemetery must recover enough funds from sales to build a trust fund sufficient to care and maintain the cemetery once all its grave sites have been sold. The Audit Council surveyed seven southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee and Virginia). In the four other southeastern states, which regulate cemeteries, the Council found requirements to be similar to those in South Carolina. Trust fund requirements ranged from \$35 per sale in North Carolina to 20% of the sale price in Tennessee. Acreage requirements ranged from 0 in Tennessee to 30 acres in North Carolina.

These licensure requirements are intended to ensure that cemeteries are able to provide for the perpetual care which consumers are purchasing. According to an official with the Board, the requirements may have prevented some individuals from starting a cemetery. The Audit Council found four new cemeteries had been licensed since June 1984.

Experience Requirement

Section 39-55-95 of the South Carolina Code of Laws requires that a cemetery employ a general manager with at least two years experience in the cemetery business. This requirement may be unnecessarily restrictive. According to *Occupational Licensing: Questions a Legislator Should Ask (1978)*:

The completion of an approved training program and certain experience requirements are usually reasonable requirements. Yet even such requirements can become exclusionary if the time involved in training is excessive

A survey of four Southeastern states which regulate cemeteries found South Carolina's experience requirement to be the highest. Tennessee and Georgia have no experience requirement and North Carolina and Florida require one year of experience. One reason cited for this requirement, in the states with experience requirements, is the complicated nature of the trust funds that cemeteries are required to establish.

Recommendation

The General Assembly may wish to consider amending §39-55-95 of the South Carolina Code of Laws to lessen or remove the experience requirement for cemetery managers.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Without state regulation, perpetual care cemeteries would no longer be required to establish and maintain trust funds to provide for the care and maintenance of grave sites or to ensure that items bought on a pre-need basis are available when needed. In addition, it would eliminate a method for handling complaints and performing inspections. Individuals seeking cemetery services may be emotionally distraught and thus unable or unwilling to search effectively for cemetery services. Four (Florida, Georgia, North Carolina, and Tennessee) of seven southeastern states regulate the cemetery industry. Further, state laws governing perpetual care cemeteries were revised in 1984 to substantially increase the requirements perpetual care cemeteries must meet in order to be licensed. Thus, termination of regulation would have greater impact now than prior to 1984. Therefore, the Audit Council recommends that regulation of the cemetery industry be continued.

Determine the overall costs, including manpower, of the agency under review.

The Cemetery Board collects revenue through license fees. From FY 84-85 through FY 87-88, the Board's expenditures increased from \$14,235 to \$21,774 while revenues increased from \$18,691 to \$28,250. In FY 87-88, Board revenues equaled 130% of appropriation, exceeding an Appropriation Act requirement that revenues equal 115% of its appropriation.

The Board has one employee. In addition, the Secretary of State estimates he spends between eight and ten hours per week on Cemetery Board business. The Secretary of State receives an allowance from the Board of \$2,500 per year. In FY 87-88, salaries and fringe benefits totaled \$20,185 comprising 93% of the Board's total expenditures. Some indirect costs, such as postage and telephone charges incurred by the Secretary of State's Office for Cemetery Board operations are not paid by the Cemetery Board.

Table 3F.1: Source of Revenues, Expenditures, and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Revenues:					
Cemetery License	\$18,691	\$19,200	\$21,750	\$28,250	\$30,569
Total	\$18,691	\$19,200	\$21,750	\$28,250	\$30,569
Expenditures:					
Personal Services	\$8,527	\$15,398	\$15,758	\$16,706	\$17,703
Other Operating Expenses	3,933	542	957	1,589	3,763
Employee Benefits	1,775	2,853	3,469	3,479	3,626
Total	\$14,235	\$18,793	\$20,184	\$21,774	\$25,092
State Appropriation	\$2,562	\$17,485	\$20,068	\$21,902	\$24,441

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Audit Council found several areas where regulation of the cemetery industry needs to be improved.

Trust Funds

The Audit Council found several areas for improvement relating to the establishment and review of cemetery trust funds. These areas include: adequacy of data in setting amounts to be deposited in trust funds, adequacy of trust funds for cemeteries established prior to the 1984 amendments, and oversight of trust funds by the Cemetery Board.

Requirements for Deposits to Trust Fund

State law requires that all perpetual care cemeteries establish a trust fund prior to being licensed. In addition, a percentage of each sale of a cemetery plot, mausoleum crypt, or grave marker is required to be deposited in the trust fund. There is also a minimum acreage requirement intended to ensure that cemeteries have adequate trust funds when they are filled.

According to an official with the Board, the current amounts required by state law for the initial deposit and percentage of each sale were not based on any study. In the 1983 audit of the Cemetery Board, the Audit Council was unable to determine the cost of maintaining a grave site. Officials in the four other southeastern states which regulate cemeteries and an official with the American Cemetery Association were not aware of any studies that had been conducted concerning the actual cost of maintaining a grave in perpetuity. However, according to officials in three of these states and in South Carolina, it is a common practice for cemeteries to use some operating revenue in addition to the interest from the trust fund to provide for the upkeep of grave sites. Therefore, it is not clear whether sufficient revenue is being placed into trust funds to allow for the care and maintenance of cemeteries once they are filled.

Recommendation

The Cemetery Board should conduct a formal study of the adequacy of the initial deposit and percentage of sales amounts required to be placed in the care and maintenance trust funds.

Cemeteries Established Prior to 1984

State law requires an initial deposit of \$15,000 into a trust fund and 10% of the sale of any grave site, 5% on the sale of any mausoleum and 8 cents per square inch on any marker. In addition, any new cemetery is required to be at least 30 acres in size. These requirements were established in 1984. Prior to 1984, the minimum deposit into the care and maintenance trust fund was \$5,000. There was no requirement that any percentage of the sale of grave markers or mausoleum crypts be placed into the trust fund and there was no minimum acreage requirement.

The new requirements apply to the sale of any cemetery plot after 1984 and to new cemeteries. One hundred seventeen of the 121 licensed cemeteries in South Carolina were licensed prior to June 1984. It is questionable whether these cemeteries have sufficient amounts in their trust funds or sufficient acreage to provide for care and maintenance once the cemetery has sold all its grave spaces.

Recommendation

The Cemetery Board should conduct a formal review of the status of cemeteries established prior to 1984 to determine if they will be able to provide perpetual care once all grave sites are sold.

Oversight of Trust Funds

State law requires that all cemeteries provide to the Cemetery Board an annual statement regarding the status of cemeteries' perpetual care trust fund. The Cemetery Board requires this report to be signed by a licensed accountant after examining the books of the cemetery to determine if the information is correct. In addition, the Board requires the bank holding the trust to report to the Board. A separate report on the status of the merchandise trust, into which all funds from pre-need sales are deposited, is also required. The merchandise trust fund report is not required to be signed by a licensed accountant.

The Cemetery Board currently has no program for examining the financial records of cemeteries for compliance with trust fund requirements. Officials with the Board of Financial Institutions and the Cemetery Board estimate that it would cost between \$25,000 and \$50,000 per year to employ an examiner to review the books of licensed cemeteries. However, this would increase the Board's budget by over 100% and is questionable whether most cemeteries would be able to bear the license fee increase necessary to cover the cost of a full-time examiner. Since 1984, license fees have increased from \$25 to a minimum of \$200. Seventy-six (63%) of the 121 licensed cemeteries in 1988 had \$100,000 or less in annual sales.

The four southeastern states which regulate cemeteries employ examiners which visit cemeteries and review their books to ensure that the proper deposits are being made into the trust funds. However, the budgets of these boards all exceed \$100,000. The South Carolina Cemetery Board has a budget of approximately \$22,000. In three of the four states, license fees do not fully cover the cost of regulation.

Recommendations

The General Assembly may wish to consider amending §39-55-185 to require that the reports on the merchandise trust fund be verified by a licensed accountant.

The Cemetery Board should develop a system for regularly examining the financial records of cemeteries to ensure they are maintaining trust funds in compliance with state law.

Inspections

The Cemetery Board does not have written guidelines or a schedule for conducting inspections of cemeteries to ensure compliance with statutes. In addition, the Board does not maintain records of inspections. According to an official with the Board, inspections are conducted by Board members when they are in the area of a cemetery. The official stated between 50 and 60 inspections were conducted in 1988. However, an Audit Council review of 46 of 121 cemetery files found no evidence of any inspections conducted in 1988.

The purpose of physical inspections of cemeteries is to evaluate their general appearance. State law requires that cemeteries maintain a cared-for appearance including shrubs and trees pruned and trimmed, flower beds weeded, and lawns mowed. Further, under the act cemeteries are required to keep certain records relating to sales and complaints.

A review of Board minutes shows that the Board has been aware of the need for an improved inspection system since at least March 1985. In January 1989, the Board decided to seek additional funds to allow Board members to make periodic inspections of cemeteries within their districts. Currently, Board members do not receive any compensation for time spent performing inspections. An improved inspection process would help to ensure that these requirements are being met.

Recommendation

The Cemetery Board should establish procedures for conducting inspections. Inspection records should be maintained. These records should include inspection date, examiner, problems found, and date of resolution.

Policies and Procedures Manual

The Cemetery Board has not adopted a policies and procedures manual. For example, the Board has no written procedures for the processing of complaints or applications for licensure. A review of the four licenses issued since June 1984 found one license was issued prior to all the requirements of the law being met. In 1983, the Audit Council recommended that procedures for handling complaints be established. Section 1-23-140 of the South Carolina Code of Laws requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls. The absence of guidelines for complaint handling, inspection, and investigations may result in inconsistent actions.

Recommendation

The Cemetery Board should adopt a policies and procedures manual to guide Board operations.

Definition of Perpetual Care

In its 1983 report, the Audit Council recommended that state law be amended to provide a definition of perpetual care. In 1984, state law was amended to require that cemeteries:

... be maintained to present a cared for appearance including, but not limited to, shrubs and trees pruned and trimmed, flower beds weeded, drives maintained, and lawns mowed when needed. ...

**State Law Concerning
Cemetery Signs**

In its 1983 report, the Audit Council recommended that state law be amended to allow only perpetual care cemeteries to display signs advertising such care. In 1984, state law was amended to require all cemeteries, except family burial grounds, to display a sign indicating whether or not they are perpetual care.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

In 1984, the Cemetery Board statutes were amended to require that two public members serve on the Board. Prior to that amendment, there were no public members. Also in 1984, the number of meetings required to be held each year was changed from one to two. The Board posts notices of its meetings outside the door of the Secretary of State's Office as required by the Freedom of Information Act. In addition, the address and telephone number of the Board are listed in the state telephone directory under the Secretary of State's Office. However, the Board could improve public participation by routinely notifying the press of its meetings.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Cemetery Board is administered by the Office of the Secretary of State. The Board does not duplicate the functions or services of any other state, federal or local agency. While the Funeral Services Board and the Cemetery Board are related, they do not duplicate each other's functions. The Cemetery Board is the only state agency which licenses cemeteries in South Carolina.

In 1983, the Audit Council recommended transferring the regulation of cemeteries to the Board of Financial Institutions (BFI). The BFI employs examiners who examine the financial condition of banks, trust companies, savings and loans and credit unions. In addition, the BFI determines if financial institutions comply with state law, rules and regulations and instructions from the Board. Transferring the regulation of cemeteries to the BFI and requiring it to conduct regular examinations of a cemetery's financial records could result in increased protection for the public but would also raise the cost of regulation (see p. F-8).

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Audit Council identified and examined 14 complaints filed with the Cemetery Board between January 1985 through December 1988. The Board's procedures for documenting complaints and investigations need to be improved.

Administration of Complaint Files

The Board has not consistently documented complaints and resolutions. Of the 14 complaints examined, files did not indicate the final resolution in 3 cases. According to a Board official, these complaints were resolved.

The Board does not have written procedures for handling complaints (see p. F-10). In addition, the Board does not keep a log of complaints that outlines the complainant, date, type and resolution of the complaint. In its 1983 audit of the Board, the Audit Council recommended that the Board develop a complaint log. Because the Board has not developed written procedures or a complaint log, there is less assurance that complaints are processed consistently.

Recommendations

The Cemetery Board should ensure that written information about Board actions and reasons for action are included in all complaint files.

The Cemetery Board should develop a log for tracking complaints.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Cemetery Board is governed by the South Carolina Code of Laws. The Audit Council found no violations of state law. However, state law defining Board membership needs to be reviewed.

Board Membership

State law requires that two members of the Cemetery Board be nominated by the South Carolina Cemetery Association. As a result, cemetery owners who belong to this private association may have greater influence on Board matters than those who do not.

Section 39-55-55 of the South Carolina Code of Laws states:

... two members *must* be selected from four nominees submitted by the South Carolina Cemetery Association. The Governor may reject any or all of the nominees submitted by the Cemetery Association upon satisfactory showing of unfitness of those rejected.
[*Emphasis Added*].

In 1985, the South Carolina Supreme Court found unconstitutional the requirement that an individual be a member of a professional association in order to serve on a state licensing board. Removal of the requirement that the Cemetery Association nominate board members would remove the appearance of undue influence by a private organization over a public body.

Recommendation

The General Assembly may wish to consider amending §39-55-55 of the South Carolina Code of Laws to delete the requirement that two members of the Cemetery Board be chosen from nominees submitted by the South Carolina Cemetery Association.

Schedule of Fees FY 88-89

	Fee
Filing Fee	\$400
License Fees	
Sales Volume up to \$100,000	200
Sales Volume from \$100,001 to \$200,000	250
Sales Volume from \$200,001 to \$300,000	300
Transfer of Ownership Fee	100

Source: Cemetery Board

State Cemetery Board Comments

State of South Carolina
Department of State

STATE CEMETERY BOARD
P.O. BOX 11350
COLUMBIA, S.C. 29211

JOHN T. CAMPBELL
Ex Officio Chairman

Phone: 734-2175

May 30, 1989

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Re: Final Draft
State Cemetery Board

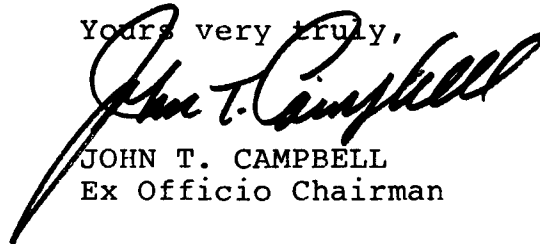
Gentlemen:

I have again reviewed the final draft concerning the South Carolina Cemetery Board and its operations and we will have no problem in most instances in accepting your recommendations for the sections that you have brought out in this draft.

In many instances, your recommendations, as we reviewed it, are not the duties of the chairman and/or the State Cemetery Board but must rest in the responsibility of our legislative body. As Chairman Ex Officio of this board and being in the executive branch of the state government, I do not feel it is my responsibility to request changes as far as the State Cemetery Act of 1984 is concerned.

As previously stated, we find no suggestions that cannot be carried out by this board other than for legislative matters.

Yours very truly,



JOHN T. CAMPBELL
Ex Officio Chairman

JTC/er

Board for Barrier Free Design

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Introduction

The Legislative Audit Council has determined that inclusion of the Board for Barrier Free Design in the schedule of sunset reviews is unnecessary since it does not exercise a regulatory function. The Board has been consolidated under the Office of Building Codes and Regulatory Services within the State Budget and Control Board, Division of General Services. This office provides the Board with administrative assistance and its Director is responsible for the overall administration and policy enforcement for the Board, in addition to the Building Codes Council, the Boards of Manufactured Housing and Pyrotechnic Safety, and the Modular Board of Appeals.

Furthermore, the Board does not issue any licenses, does not generate revenue, and does not regulate any profession or industry. According to the State Reorganization Commission (1984):

The intent of [the "Sunset Act"] . . . was to identify and eliminate, using established criteria, those licensing and regulatory agencies of State Government found to be an unnecessary burden on the citizens of the State.

Recommendation

The General Assembly may wish to consider removing the Board for Barrier Free Design from sunset review under Act 608 of 1978.

Background

Prior to the creation of the Board for Barrier Free Design, handicapped individuals, both physically and those hindered by sight, hearing, coordination, and aging disabilities, were covered by Act 174 of 1963. This act required buildings and facilities constructed with state, county, or municipal funds to be accessible to the handicapped. Accessibility was to be in accordance with standards and specifications contained in the act. Responsibility for enforcement was divided among the State Educational Finance Commission, the Chief Engineer of the State Budget and Control Board, and local governments.

Act 1191 of 1974 created the Board for Barrier Free Design rescinding Act 174 of 1963. In addition to creating a Board, buildings and facilities required to be accessible to the handicapped were extended to all governmental and publicly used buildings. The Board is a branch of the State Budget and Control Board under the supervision of the Division of General Services, Office of Building Codes and Regulatory Services, which provides staff and administrative assistance.

The Board consists of nine voting members, which includes six public members appointed by the Governor to serve four-year terms. By law, two of these members are handicapped persons and one must be a licensed architect. The Board's three ex officio members are the Director of Building Codes and Regulatory Services; the Director of the State Department of Vocational Rehabilitation; and the State Engineer employed by the Budget and Control Board. The mandated duties of the Board are the establishment, publication, and enforcement of minimum standards and specifications to eliminate architectural barriers. The Board established standards and specifications for barrier free design using the American National Standard Institute Specifications A117.1 and the Standard Building Code.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Audit Council could not determine a direct impact on the costs of goods and services incurred by the administration of the Board's functions. The Board may have an indirect effect on the costs of new buildings and renovations when enforcing the elimination of architectural barriers. However, the effect created by barrier free requirements is limited by §10-5-270(b) of the South Carolina Code of Laws. This section states that if the incremental construction or renovation costs for implementation of the standards exceeds 7% of total cost, a waiver may be granted.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Should the Board be terminated, there would be no measurable economic or fiscal impact since the Board does not license or regulate a profession, nor does the Board function as an independent regulatory board. However, since no other agency operates to ensure the elimination of architectural barriers to the handicapped, the welfare of physically impaired citizens could be negatively impacted if the Board were discontinued.

The Board's primary responsibility is to establish, publish, and enforce minimum standards necessary to ensure barrier free design and use of public and government facilities by the handicapped. The Board also hears requests for waivers or modifications of required standards for areas of the state which do not have building codes, building inspectors, or local Boards of Adjustments and Appeals. Local Boards of Adjustments and Appeals are also required to notify the Board when they issue waivers of mandatory handicapped design standards in counties and municipalities with building codes. In addition, the Board may withdraw the authority of existing Boards of Adjustments and Appeals if barrier free design regulations are not being adequately enforced.

Determine the overall costs, including manpower, of the agency under review.

The Board for Barrier Free Design did not generate revenue but received appropriations from the General Fund. The Board receives its funds through the Division of General Services, Office of Building Codes and Regulatory Services. From FY 84-85 to FY 87-88, the Board's expenditures ranged between \$49,539 and \$70,413 (see Table 3G.1).

Table 3G.1: Source of Expenditures and Appropriations

	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89 (estimated)
Expenditures:					
Personal Services	\$37,391	\$56,158	\$56,296	\$53,747	\$61,144
Other Operating Expenses	12,148	15,589	13,613	16,666	23,444
Total	\$49,539	\$71,747	\$69,909	\$70,413	\$84,588
State Appropriation	\$87,673	\$97,671	\$91,809	\$84,588	\$84,588

Source: South Carolina Budget and Control Board Documents

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

In its 1983 report, the Audit Council recommended that the position of Director for the Board of Barrier Free Design be changed to an inspector under the Office of Building Codes and Regulatory Services. In January 1987, the Board for Barrier Free Design staff was restructured in order to improve the effectiveness of the Board in carrying out its legislative mandates. Because of the compatibility of the Building Codes Council and the Board for Barrier Free Design, the Building Codes Council staff assumed the administrative functions of the Board with the supervisor of the Building Codes Council also assigned supervision of the Board for Barrier Free Design. Prior to January 1987, administration of the Board staff functions were inadequate. None of the Audit Council recommendations from its 1983 review of the Board appeared to have been addressed before that date. Since January 1987, with the restructuring and consolidation of Board staff, the Board is taking steps to address the problems noted. In addition, as of September 1988, a monthly report was implemented to inform Board members of the progress and activities of Board staff.

Inspection Program

In its 1983 review, the Audit Council recommended that areas of the state which have Local Boards of Adjustments and Appeals be identified. The Board has enforcement authority for approximately 400 municipalities in 42 counties in South Carolina. A Board official stated that there are approximately 50 municipalities in the state which have Boards of Adjustments and Appeals to enforce handicapped regulations. Between January 1988 and February 1989, the Board performed approximately 360 inspections of building permits and construction sites in 27 counties.

Review of Construction Plans

In its 1983 review, the Audit Council recommended that construction plans involving barrier free design be submitted for review. The Board has implemented procedures for the submission and review of construction plans, both in the office

and in the field, to ensure compliance with barrier free regulations. In calendar year 1988, the Board reviewed 24 construction plans of buildings required to have handicapped accessibility.

Waivers

In its 1983 review, the Audit Council recommended that a waiver reporting form for the Boards of Adjustments and Appeals be designed and implemented. The Board also reviews and hears requests from contractors and builders who wish to have barrier free regulations waived because of extenuating circumstances regarding the type and use of the building.

The Board has designed a waiver request form which is processed by Board staff using criteria set forth in §10-5-270 of the Code of Laws. This section states that barrier free regulations may be waived by the Board if; (a) handicapped accessibility can be provided by an acceptable alternative; or, (b) cost to conform to barrier free standards exceeds 7% of total construction cost; or, (c) occupancy and employment practices would exclude use of the building by the handicapped; or, (d) use or size of the building has a minimal impact facilitating the handicapped; or, (e) the building is classified as a historical building. Requests are then presented to the Board for their consideration.

In addition, local Boards of Adjustments and Appeals report waiver requests and action taken to the Board. From April 1987 to February 1989, the Board heard one waiver request, one appeal, and two variance requests. Of these requests, the Board granted only one waiver and one variance.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Board has nine voting members, which includes six public members in addition to three ex officio members. Scheduled meetings and agendas are posted, publicly announced, and are open to the public. Also, the Board has prepared video cassette presentations for building inspectors and contractors regarding barrier free design. In addition, the Board is working on a field manual for contractors, engineers, building inspectors, and architects which will contain working diagrams of handicap facilities and specifications using the American National Standards Institute specifications and will also contain the Board's statutes and regulations.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Board has defined and located 42 counties and 395 communities in South Carolina which have not adopted building codes, appointed building officials, or have not established local Boards of Adjustments and Appeals for the enforcement of barrier free design standards or handling of waivers. Section 10-5-270 states that the Board is responsible for all areas not covered by local building officials and Boards of Adjustments and Appeals. In addition, Federal Rehabilitation Act 504 requires accessibility by the handicapped for buildings which receive federal funding.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

In the 1983 review, the Audit Council found that the Board did not have a system for recording and handling complaints. After administrative restructuring of Board staff in January 1987, the Board has established written procedures for the handling of complaints and has added a central complaint log. Procedures for handling complaints are included in the Board's policies and procedures manual. The complaint log, for each complaint, lists the complainant, date and nature of the complaint, location, and date of resolution. Between August 1987 and April 1989, the Board resolved ten complaints. Of these ten complaints, six pertained to problems of general accessibility to buildings or parking, two regarded problems with doors, one regarded no handicapped facilities, and one pertained to the lack of listening devices for the hearing impaired.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board for Barrier Free Design is regulated only by the statutes and regulations enacted by the State of South Carolina. In its 1983 review, the Audit Council found that the Board's regulations reiterate its enabling legislation. The Board has submitted proposed changes in its statutes to the General Assembly for review and plans to revise its regulations after approval of these statutory changes.

The Audit Council reviewed all laws and regulations pertaining to the administration of the Board to determine equitable and consistent application. The Council has found no evidence that the Board is not in compliance with all appropriate statutes and regulations.

Board for Barrier Free Design Comments

STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES



CARROLL A. CAMPBELL, JR.
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CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

JESSE A. COLES, JR., Ph.D
EXECUTIVE DIRECTOR

BUILDING CODES AND REGULATORY SERVICES
1201 MAIN STREET, SUITE 820
COLUMBIA, SOUTH CAROLINA 29201

June 14, 1989

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

This is to acknowledge receipt of your final report on the Board for Barrier Free Design.

Staff has informed me of the efficient manner in which the audit was conducted and the pleasant, professional attitude displayed by Ms. Cheryl Ridings and Mr. Dean Williamson. In addition, I would like you to know that the audit was conducted without interruption of the day to day activities by the Board, for which staff and I am grateful.

I have had the opportunity to review the final draft with staff and several members of the Board. It is our collective opinion that the report is accurate and complete.

Thank you again, for your considerations throughout the entire audit. If staff or I may be of additional service to you please don't hesitate to let us know.

Sincerely,


Billy R. East, Chairman
SC Board for Barrier Free Design

/tj

Athletic Trainers' Advisory Committee

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Introduction

After reviewing the certification program for athletic trainers, the Legislative Audit Council concludes that there is a public need for the regulation of athletic trainers. However, several areas of administrative operations and state law regarding the exemption of school employees need to be reviewed.

Background

The Athletic Trainers' Advisory Committee was created by Act 441 of 1984. The Committee reviews standards and regulations for improving athletic training services. "Athletic trainer" means a person who carries out the practice of prevention and physical rehabilitation of injuries incurred by athletes. There are 35 certified athletic trainers in South Carolina. Administrative responsibility for certifying athletic trainers is vested in the Department of Health and Environmental Control.

The Advisory Committee is composed of eight members appointed by the Board of the Department of Health and Environmental Control (DHEC), including two DHEC employees, one member of the State Board of Medical Examiners, three certified trainers, and two public members.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Athletic Trainers' Advisory Committee has no direct control over prices charged by athletic trainers. There are license fees imposed, but it is unlikely these costs significantly affect the price of athletic training services.

Restricting the practice of athletic training to persons certified by the state could indirectly result in increased prices by reducing the supply of athletic trainers. The requirements for certification are:

- completion of the athletic training course work at a college or university; or
- a bachelor's degree in a physical or corrective therapy with two years experience under a certified athletic trainer; or
- four years experience under a certified athletic trainer; and passage of an examination.

Section 44-75-80 of the South Carolina Code of Laws exempts from the certification requirement faculty or staff hired by a school and who provide training services, so long as they do not call themselves athletic trainers. Thus, schools may hire noncertified individuals to provide athletic training services without paying the increased cost caused by regulation. However, this may also provide less protection to the public (see p. H-3).

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Without state regulation, the likelihood of injuries to student athletes may be increased. A study conducted by the National Athletic Trainers' Association (NATA) estimated there are one million injuries to high school athletes annually. Approximately 2% require surgery.

Student athletes generally cannot shop for athletic training services and thus, must rely on the individual employed by the school to be competent in providing those services. In addition, schools which have medical personnel attend games generally do not have them attend practices where, according to the NATA study, the majority of injuries to student athletes occur.

According to a study conducted in South Carolina (Athletic Training, Spring 1985), teams which employed certified trainers are better able to identify and treat injuries to athletes. This can result in less chance of re-injury and also allow the athlete to return to participation sooner. Therefore, the Audit Council recommends continued regulation of athletic trainers. However, a provision in state law exempting schools from hiring certified athletic trainers may reduce the protection provided the public through regulation.

Exemptions

Section 44-75-80 of the South Carolina Code of Laws allows schools to employ noncertified individuals as athletic trainers so long as they do not call themselves "athletic trainers." According to an official with the Athletic Trainers' Advisory Committee, this provision was inserted into the law because of concern over the cost if schools were required to use certified trainers.

In North Carolina, the State Department of Instruction has instituted a program through which a \$500 stipend is provided a school which designates one of its faculty to act as an athletic trainer. This money can be used as either a salary supplement or to pay for the teacher to attend seminars in athletic training. Texas has teacher/trainers, individuals certified in both teaching and training and whose salaries are equivalent to full-time teachers, who split time between the classroom and training activities.

Allowing individuals to provide training services who do not meet minimum requirements could result in diminished protection for the public and could increase the liability of the school should an injury be improperly treated.

Recommendation

The Athletic Trainers' Advisory Committee and DHEC should conduct a study of the costs and potential benefits of a teacher/trainer program and make recommendations to the General Assembly.

Determine the overall costs, including manpower, of the agency under review.

The certification program for athletic trainers is administered by the Department of Health and Environmental Control (DHEC). State law allows DHEC to levy fees sufficient to cover the cost of administration. There is no separate appropriation for the Athletic Trainers' Advisory Committee and thus, it is not required to comply with an Appropriation Act proviso which requires all regulatory boards to collect 115% of their appropriation.

DHEC does not have a formal budget for the Committee. DHEC has assigned one employee to the Committee and he estimates he spends approximately 1% of his time on Committee-related work. The secretary/treasurer of the Committee, who is not a DHEC employee, is responsible for the processing of applications, collecting fees, and general correspondence (see p. H-10).

Total personnel expenses are approximately \$1,200 per year. Committee members have not received per diem and other operating expenses of the Committee have amounted to less than \$25.

Revenues for the Committee since its creation in 1984 amount to \$1,895. This money is kept in a separate bank account and not deposited to the state's General Fund. According to the secretary/treasurer of the Committee, there have been no expenditures out of this account.

Recommendation

The Department of Health and Environmental Control should collect fees sufficient to cover the cost of administering the Athletic Trainers' certification program, including personnel costs and other expenses. All revenues collected should be deposited to the state's General Fund.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The Audit Council found several areas where the operations of the certification program for Athletic Trainers' could be improved.

Policies and Procedures Manual

The Department of Health and Environmental Control (DHEC) has not adopted a policies and procedures manual for the certification program for athletic trainers. For example, DHEC has no written procedures for the processing of applications or handling of complaints. Section 1-23-140 of the South Carolina Code of Laws requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls. The absence of guidelines for complaint handling, processing of applications, and investigations may result in inconsistent actions.

Recommendation

The Department of Health and Environmental Control should adopt written policies and procedures to guide program operations.

Board Membership

The Athletic Trainers' Advisory Committee has an eight-member board. To reduce the chances of tie votes, a board should have an odd number of members.

Recommendation

The General Assembly should consider amending §44-75-30 of the South Carolina Code of Laws to require an odd number of members on the Athletic Trainers' Advisory Committee.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Athletic Trainers' Advisory Committee was created in 1984. State law requires that two public members serve on the Committee and that the Committee meet at least once each year. The Committee has met seven times since its creation. The Committee does not routinely post notices of its meetings as required by the Freedom of Information Act, nor does it notify the media. In addition, the address and telephone number of the Committee are not listed in the state telephone directory. The Committee has complied with the Administrative Procedures Act regarding promulgation of regulations.

Recommendation

The Athletic Trainers' Advisory Committee should post notices of all Committee meetings as required by the Freedom of Information Act. Additionally, the Committee should notify the media of its meetings and have its address and telephone number listed in the state telephone directory.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The certification program for athletic trainers is administered by the Department of Health and Environmental Control. This program does not duplicate the functions or services administered by any other state, federal, or local agency.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Department of Health and Environmental Control (DHEC) has received no written complaints against certified trainers. There have been two verbal complaints made by two members of the South Carolina Athletic Trainers' Association. Both complaints involved individuals holding themselves out as athletic trainers without being certified. One complaint was resolved when the individual agreed to stop holding himself out as an athletic trainer. The second complaint is ongoing.

There is no written procedure for investigating complaints against certified trainers. Without complete written records of actions taken, DHEC may not be adequately prepared in the event of challenges to its actions. In addition, there is no log of complaints that outlines the complaint, date, type, and resolution of the complaint.

Recommendation

The Department of Health and Environmental Control should develop a log for tracking complaints.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Athletic Trainers' Advisory Committee is governed by the South Carolina Code of Laws. The Audit Council found two areas where the Committee had not complied with state law.

Administration of the Certification Program

The Department of Health and Environmental Control (DHEC) is not administering the certification program as specified by law. DHEC does not process applications, investigate complaints or collect fees. Rather, the secretary/treasurer for the Athletic Trainers' Advisory Committee, who is not a DHEC employee, performs these duties.

State law specifies that the Committee is to provide advice regarding the development of standards and regulations relating to athletic training. However, state law places all administrative responsibility for the certification program with DHEC. In addition, DHEC is charged with the responsibility of reviewing applications and suspending or revoking a license.

According to an official with the Advisory Committee, individuals certified in 1986 have not yet been charged a renewal fee because these individuals have not been issued their original certificates. As a result, approximately \$1,000 in revenue has not been collected.

Recommendation

The Department of Health and Environmental Control should handle the administrative functions of the certification program as required by state law.

The Department should issue certificates to all certified trainers and collect renewal fees where appropriate.

Examination Requirement

It is the practice of the Athletic Trainers' Advisory Committee to require all applicants for certification to pass an examination. State law and regulation require examinations only for applicants who do not have a degree in athletic training or a degree in a related field plus two years experience under a certified trainer. In addition, state law specifies that DHEC, not the Committee, is to determine if an applicant meets the qualifications for certification. The Committee's function is only to provide advice regarding the standards for athletic training services.

The Committee denied certification to one applicant, even though she had a degree in athletic training, because she had not passed an examination. Requiring all applicants to pass an examination is a violation of state law and has restricted entry into the profession.

Recommendation

Requirements for certification should not be stricter than those allowed by law.

Schedule of Fees FY 88-89

	Fee
Application Fee	\$ 50
Examination Fee ¹	175
Reexamination Fee ¹	175
Biennial Renewal Fee	40
Late Renewal Fee	55
Restoration Fee	100
Other Fees	
Duplicate Certificate	\$ 5
Duplicate ID Card	2

¹Examination is given by the National Athletic Trainers' Association.
Source: Athletic Trainers' Advisory Committee

Athletic Trainers' Advisory Committee Comments

South Carolina Department of Health and Environmental Control

2600 Bull Street
Columbia, S.C. 29201

Commissioner
Michael D. Jarrett



Board

Toney Graham, Jr., M.D., Chairman
Henry S. Jordan, M.D., Vice-Chairman
John B. Pate, M.D., Secretary
William E. Applegate
Oren L. Brady, Jr.
John Hay Burriss
Euta M. Colvin, M.D.

June 19, 1989

Mr. Perry Simpson
Legislative Audit Council
620 NCNB Tower
Columbia, S.C. 29201

Dear Mr. Simpson,

The comments and recommendations were most useful in helping us improve the operations of the Athletic Trainers Advisory Committee. The Committee will be a valuable force in the health and welfare of athletes, in particularly young athletes.

Specific Comments:

Issue 1-3 - Agreed on endorsed recommendations.

Issue 4 - Policy manual - Excellent concept
number of members - agree. We have had
no true vote to date. Will require
legislative change.

Issue 5-7 - Agreed, good will comply.

Issue 8 - Informing; to the best of my recollections
no one was denied application due to
"failure to pass a test" but due to a lack
of several professional qualifications.

The committee appreciates the process we have been
through. It will only improve the service.

Sincerely,



Jim Testor
Staff Director

Report Appendix

FTC Comments January 23, 1989



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 23, 1989

George L. Schroeder
Director
Legislative Audit Council
State of South Carolina
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The staff of the Federal Trade Commission 1/ is pleased to respond to the invitation of the Legislative Audit Council of the State of South Carolina to comment on the possible restrictive or anticompetitive effects of the state's statutes or regulations governing the activities of nine state agencies: (i) the Board of Registration for Landscape Architecture; (ii) the Board of Architectural Examiners; (iii) the Board of Funeral Service; (iv) the Board of Examiners for Registered Sanitarians; (v) the Board of Social Work Registration; (vi) the State Cemetery Board; (vii) the Building Code Council; (viii) the Board for Barrier Free Design; and (ix) the Athletic Trainers Advisory Committee. 2/

The comments below identify provisions of the relevant statutes and regulations that may have anticompetitive effects

1/ These comments represent the views of the staff of the Federal Trade Commission's Bureau of Competition and do not necessarily represent the views of the Commission itself or any individual Commissioner.

2/ Commission staff provided comments to the Legislative Audit Council of South Carolina on four prior occasions. On February 19, 1987, Commission staff commented on the sunset audit of the Boards of Optometry and Opticianry. On April 23, 1987, Commission staff commented on the sunset audit of the Boards of Podiatry Examiners, Occupational Therapy Examiners, Speech and Audiology Examiners and Psychology Examiners. On September 29, 1987, Commission staff commented on statutes administered by the South Carolina Public Service Commission. Finally, on January 15, 1988, Commission staff commented on the regulations governing the state's Licensing Board for Contractors, Residential Home Building Commission, Real Estate Commission, Board of Certification for Environmental System Operators, Board of Registration for Professional Engineers and Land Surveyors, and Manufactured Housing Board.

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and thereby injure consumers. In Part I of these comments, we identify the interest and experience of the Commission's staff in the area of occupational regulation. In Part II, we discuss the considerable published research on the effects of occupational licensing. In Part III, we examine specific provisions of the statutes and regulations that may have anticompetitive effects. We do not have any comments with respect to the statutes and regulations governing the state's Cemetery Board, the Board for Barrier Free Design, and the Athletic Trainers Advisory Committee.

I. Interest and Experience of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive practices in or affecting commerce. 15 U.S.C. § 45. Under this statutory mandate, the Commission seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. The Commission has sought to improve consumer access to professional services by initiating antitrust enforcement proceedings ^{3/} and conducting studies concerning various facets of the regulation of licensed professions. ^{4/} In addition, the Commission's staff has submitted comments to state legislatures and administrative

^{3/} See, e.g., Massachusetts Board of Registration in Optometry, [FTC Complaints and Orders transfer binder] 5 Trade Reg. Rep. (CCH) ¶ 22,555 (June 21, 1988); Rhode Island Board of Accountancy, 107 F.T.C. 293 (1986) (consent order); Louisiana State Board of Dentistry, 106 F.T.C. 65 (1985) (consent order); American Medical Ass'n, 94 F.T.C. 701 (1979), aff'd, 638 F.2d 443 (2d Cir. 1980), aff'd mem. by an equally divided court, 455 U.S. 676 (1982); American Dental Ass'n, 94 F.T.C. 403 (1979), modified, 100 F.T.C. 448 (1982), 101 F.T.C. 34 (1983) (consent order).

^{4/} See, e.g., Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983); Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

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agencies on various issues of professional licensing and regulation. 5/

II. The Costs and Benefits of Occupational Licensing

The rationale for occupational licensing traditionally has been to guarantee a minimum quality standard in order to (a) reduce uncertainty about quality that consumers face when purchasing professional services, and (b) prevent those costs of low-quality service that might be imposed on society.

Proponents generally justify occupational licensing on the ground that regulation is necessary to correct an informational asymmetry between service providers and consumers. Because licensed occupations often provide services that require highly specialized, technical expertise, it is thought that consumers may lack the information and resources to evaluate the quality of services. For example, an unsuccessful litigant may be unable to determine whether he failed to prevail because his case lacked merit or because his lawyer was incompetent. A patient whose treatment fails to cure an illness similarly may be unable to determine whether the treatment failed because of the limitations of medical science or the failings of her doctor. If consumers cannot evaluate quality, producers may provide lower quality services than consumers desire. 6/ Licensing thus may be necessary to raise service quality above the level that would prevail in an unregulated market.

In many instances, however, this argument in support of mandatory licensing is not entirely convincing. Although consumers may have less information on quality than producers, they often receive adequate information from a variety of sources. 7/ Consumers can assess quality on the basis of their own purchase experience and the experience of friends, relatives, or neighbors, information provided by sellers or by various consumer-oriented publications, and inferences drawn from the

5/ In the past two years, Commission staff have commented on rules of professional conduct or regulations governing attorneys, chiropractors, dentists, optometrists, pharmacists, physical therapists, physicians, and real estate brokers.

6/ See Leland, Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards, 87 J. Pol. Econ. 1328 (1979); Leland, Minimum-Quality Standards and Licensing in Markets with Asymmetric Information, in S. Rottenberg, Occupational Licensure and Regulation 264 (1980).

7/ S. Young, The Rule of Experts: Occupational Licensing in America 17 (1988).

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length of the seller's experience in business. 8/ Voluntary certification also conveys to consumers information on service quality. 9/ Consequently, in many cases the markets for professional services may generate sufficient information to enable consumers to make informed judgments about service quality without the imposition of licensing.

The second common argument in favor of licensing is that purchasers of low quality professional services may impose significant costs on third parties. For example, a person suffering from a contagious disease who is treated by an incompetent physician may pass on the disease to other persons who did not deal with the incompetent physician. While this argument has theoretical appeal in some cases, its actual relevance to any particular profession must be examined closely.

A fundamental objection to licensing and related governmental restrictions on professional practice is that they often fail to achieve their stated purpose of raising quality. Empirical research, including studies by the Commission's staff, indicates that licensing may not increase the quality of services offered to consumers. For example, a study of the relationship between licensing and fraud in the television repair industry found that licensing failed to reduce the incidence of fraud compared to an unregulated market. 10/ Another study examined

8/ Id. at 17-18. Many products that consumers commonly purchase, such as microwave ovens, personal computers, or automobiles, are technologically complex. Although very few consumers understand the mechanisms that make these products operate, they nevertheless are able to make judgments concerning product quality, principally through the sources described above.

9/ Under a certification program, only persons who meet certification requirements may identify themselves as being certified, but noncertified persons are not barred from practicing the occupation. In contrast, under a licensing system, only individuals who obtain a license from the state may lawfully engage in the practice of the licensed occupation. Even if the market did not furnish sufficient information on service quality to consumers, a state-supported certification program may provide them that information without imposing on them the types of costs associated with licensing. See M. Friedman, Capitalism and Freedom 144-49 (1962).

10/ J. Phelan, Regulation of the Television Repair Industry in Louisiana and California: A Case Study (Federal Trade Commission 1974). The study also found that the cost of repairs was higher in New Orleans, which imposed a licensing requirement, than in
(continued...)

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licensing rules that restricted the use of dental auxiliaries (hygienists and assistants) to perform certain dental procedures. The study found that the quality of service provided by the auxiliaries in performing those procedures was equal to that provided by the licensed dentists. ^{11/} Another recent FTC staff study found that the quality of eye examinations by optometrists was similar in the different jurisdictions studied, even though the stringency of their licensing regulations differed. ^{12/}

Even when occupational licensing does increase the quality of services offered by licensed practitioners, it does so at a cost. By restricting the supply of practitioners and raising the cost of entry into licensed occupations, licensing tends to increase the price of services to consumers. ^{13/} In addition, by raising the cost and limiting the availability of services, licensing tends to induce some consumers to do without the services or to rely on self-help. Consumers' tendency to use self-help measures when the cost of services is raised or the supply is limited, in turn, may result in a reduction of the overall quality of services actually consumed even when that portion of the services delivered by the licensed occupation increases in quality. Thus, studies have shown that restrictive licensing of electricians was associated with a higher rate of death by electric shock, apparently because more consumers

^{10/}(...continued)

San Francisco and Washington, D.C., which did not. In addition, the study found that the incidence of fraud was 60 percent lower in San Francisco, where repair personnel were not licensed but where a state agency performed unannounced investigations of repair facilities, than in New Orleans, where repair personnel were licensed.

^{11/} N. Liang and J. Ogur, Restrictions on Dental Auxiliaries (Federal Trade Commission 1987). Auxiliaries include hygienists, who are licensed in all 50 states, and dental assistants, who are generally unlicensed. For the procedures studied, licensing requirements in many states restricted the use of auxiliaries. The restrictions included outright prohibitions on the use of auxiliaries to perform certain procedures, requirements that auxiliaries be supervised by licensed dentists, and restrictions on the number of auxiliaries that dentists could employ.

^{12/} The Case of Optometry, *supra* note 4; Bond, Kwoka, Phelan & Taylor, Self Regulation in Optometry: The Impact on Price and Quality, 7 *Law & Human Behav.* 219 (1983).

^{13/} See, e.g., The Case of Optometry, *supra* note 4; Shepard, Licensing Restrictions and the Cost of Dental Care, 21 *J.L. & Econ.* 187 (1978); Phelan, *supra* note 10.

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resorted to self-help, 14/ and that houses tended to remain unsold for longer periods in areas with restrictive licensing of real estate brokers. 15/ The overall result in many cases is that "the lower middle classes and the poor . . . tend to be short-changed and offered low quality or no service at all." 16/

One alternative to licensing that regulatory authorities may consider is voluntary certification. Under a certification program, only persons who meet specified requirements, such as educational, testing, or experience requirements, may hold themselves out as certified members of the profession, but persons who do not meet these requirements are nevertheless permitted to practice their trade. 17/ The advantage of this sort of system is that it conveys to consumers the kinds of information that a licensing regime is intended to provide but does not impose quality preferences on consumers. Consequently, consumers who prefer to purchase lower priced, lower quality services may continue to do so.

III. Analysis of Statutes and Regulations

A. Board of Registration for Landscape Architecture

The regulatory scheme for landscape architects resembles in many respects a voluntary certification program. Some aspects of landscape architecture may be practiced without a license. South Carolina law permits landscape contractors, gardeners, and nursery owners to engage in the practice of their professions without regulatory constraints. 18/ In addition, architects who

14/ See Carroll & Gaston, Occupational Restrictions and the Quality of Service Received: Some Evidence, 47 South. Econ. J. 959 (1981); Carroll & Gaston, Occupational Licensing: Final Report (1977). See generally Carroll & Gaston, Occupational Licensing and the Quality of Service: An Overview, 7 Law & Hum. Behav. 139 (1983); "[I]n the seven most restrictive states, up to ten times more accidental electrocutions occurred." Hogan, The Effectiveness of Licensing: History, Evidence, and Recommendations, 7 Law & Hum. Behav. 117, 123 (1983).

15/ See Occupational Licensing: Final Report, *supra* note 14. The increased duration of availability for sale is correlated with a lower ratio of brokers per capita. See Occupational Restrictions, *supra* note 14, 47 South. Econ. J. at 970-73.

16/ Quality of Service, *supra* note 14, at 145.

17/ See note 9, *supra*.

18/ S.C. Code Ann. § 40-28-150(g), (h).

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are not licensed as landscape architects, engineers, and surveyors are permitted to perform "landscape architectural work . . . when such work is incidental to their practice." 19/ The statute appears to require consumers to retain the services of licensed landscape architects only under very limited circumstances. 20/ For that reason, a license as a landscape architect, which entitles its bearer to use the title "landscape architect," is similar in nature to a certification scheme in that it does not bar unlicensed persons from performing many of the functions of a landscape architect.

Two restrictions in the statutes and regulations governing landscape architects, however, may have potential anticompetitive effects. First, the statute bars corporations and partnerships from using "any form of the title 'Landscape Architect' in connection with the corporate or partnership name." 21/ The use of the title landscape architect in the title of a firm whose members are so licensed could convey useful information to consumers and reduce their search costs in identifying and procuring the services of landscape architects. The harm that could be caused by the use of the title in firm names is not readily apparent. For that reason, the Council may wish to consider whether to retain this prohibition.

The second restriction that the Council may wish to consider is set forth in the regulations of the Landscape Architects Board of Registration. Under those regulations, a landscape architect is subject to disciplinary action for obtaining, offering to undertake, or accepting a commission for which the architect knows another firm has been selected or employed, unless the architect has evidence that the commission has been terminated. 22/ Restrictions on the ability of producers of goods or services to accept an offer from a potential client who has procured the services of another producer may, depending upon

19/ S.C. Code Ann. § 40-28-150(b)-(d).

20/ The use of a landscape architect would appear to be required for the design of landscaping projects that are not incidental to the practice of other design professionals and that encompass structural features other than plantings. The licensing requirement would thus appear to be limited to major landscaping projects. It may be argued that the selection of an incompetent architect to work on such projects could cause harm to third parties, such as through drainage into adjacent properties.

21/ S.C. Code Ann. § 40-28-160(b).

22/ Regulations of Landscape Architects Board of Registration, § 74-8(A)(5), (B).

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the circumstances, lead to higher prices by restraining competition among producers. We do not have sufficient information on the market for landscape architectural services in South Carolina or the rationale for the adoption of this rule to assess the rule's probable effects. We note, however, that if the purpose of the rule is to prevent interference with contractual relationships, it may be overbroad insofar as it prohibits the solicitation of business from a client who has "selected" a landscape architect but has not entered into a contract for the architect's employment. The Council may wish to consider the specific reasons for the promulgation of this rule and weigh the benefits, if any, of the rule against its potential costs.

B. Board of Architectural Examiners

The licensing scheme for architects in South Carolina also bears strong resemblance to a certification program. Designers or planners of buildings must be licensed as architects only when designing major structures. 23/ Except with respect to the construction of major structures, the licensing of an architect serves as a seal of approval of the competence of the license holder rather than as a barrier to entry into the field of building design. 24/

Two restrictions in the statutes and regulations governing the licensing of architects may reduce consumer welfare. First, the regulations of the Board of Architectural Examiners subject

23/ Under S.C. Code § 40-160(3), persons not licensed as architects may make drawings and specifications for certain types of structures if they sign them with "the true title of their occupations" The exempted structures include: (a) buildings used solely for family purposes; (b) buildings with an area of less than 6,000 square feet, unless such buildings are to be used for educational, institutional, or hazardous purposes; (c) family residences of up to four units, with each having a grade level exit; (d) free standing places of assembly with a capacity of no more than 75 persons; (e) mercantile and industrial buildings with a capacity of no more than 100 persons; and (f) alterations to exempted structures.

24/ With respect to the structures for which the use of a licensed architect is required, the use of an incompetent architect could have an effect on a large number of third parties. For example, the collapse of a large public structure will likely injure many individuals who never dealt with its designer. It is therefore arguable that a licensing requirement is justified if licensing in fact does guarantee the desired level of competence.

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architects to disciplinary action for "dishonest practice, unprofessional conduct or incompetent practice" if they accept compensation from materials or equipment suppliers in return for specifying or endorsing their products. 25/ This restriction may have an inefficient effect in that the provision of compensation by suppliers may create an incentive for architects to familiarize themselves with new products in the market and specify them in building plans. 26/ Such specification, in turn, reduces search costs for consumers who purchase architectural services. For that reason, a prohibition of the practice may not serve the interests of consumers. Insofar as the state has determined that the payment of compensation by materials or equipment suppliers has unduly influenced the judgment of architects in the state, it may wish to consider requiring architects who receive such payments to disclose them to their clients.

Second, the regulations prohibit architects from making gifts with the intent of influencing the judgment of existing or prospective clients. 27/ Although the regulation may be intended to prohibit bribery, its effect may be much wider. The provision of gifts from the architect to the client (as opposed to agents or employees of the client) may be a form of price competition among architects. The regulation, as currently drafted, thus may prohibit both desirable competition among architects and payments used to taint the judgment of employees of potential clients. The Council may wish to consider ways of limiting this regulation to prohibiting undue influence of employees or agents of potential clients but permitting architects to give gifts or other inducements to the clients themselves.

C. Board of Funeral Service

Under South Carolina law, no person may be issued a license as an embalmer or a funeral director unless that person has completed a minimum of 24 months of service as an apprentice under the direct supervision of a person so licensed and actively practicing within the state. 28/ In addition, the statute limits

25/ Regulations of Board of Architectural Examiners, § 11-15, 11-15(A)(3).

26/ We noted with respect to an identical restriction in the regulations of the South Carolina Board of Engineering Examiners that "[w]hile this regulation would prevent clearly fraudulent 'kickbacks' that would harm consumers, it might also inhibit potentially beneficial outcomes." FTC Staff Comments to George L. Schroeder, January 15, 1988, at 11.

27/ Regulations of Board of Architectural Examiners, § 11-15(D)(2).

28/ S.C. Code Ann. § 40-19-100(1)(A)(v), (1)(B)(iv).

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the number of apprentices that may be employed by each license holder. 29/ We presume that the state intends by this requirement to facilitate a minimum level of competence for embalmers or funeral directors. This type of requirement, however, could also be used by incumbent embalmers or funeral directors to restrict entry into those professions in the state and thereby increase the price for their services. An apprenticeship requirement, by its nature, is more susceptible to misuse by incumbents who seek to reduce entry into a profession than are reasonable testing or educational requirements that are adopted and administered by the state itself. The Council may wish to consider whether the objectives of the apprenticeship requirement may be attained through a means that is less susceptible to restricting competition, such as allowing applicants to satisfy testing or education requirements as an alternative. 30/ If the Council decides that the apprenticeship requirement should be retained, it may wish to reconsider the requirement that the apprenticeship be completed in South Carolina. By opening entry into the professions to persons who receive their experience elsewhere, the state would diminish the ability of incumbent embalmers and funeral directors to block entry into their professions and thereby to raise prices.

In addition, regulations of the state's Board of Funeral Services provide that persons licensed as embalmers or funeral directors in other states are not entitled to obtain South Carolina licenses on the basis of reciprocal agreements with other states. 31/ This restriction appears to insulate further South Carolina embalmers and funeral directors from competition. Restrictions on the mobility of professionals have been found to

29/ S.C. Code Ann. § 40-19-120.

30/ We note, for example, that South Carolina establishes a shorter apprenticeship requirement for architects who meet certain educational requirements than for those who do not. S.C. Code § 40-3-60(2). While we believe that the adoption of state-imposed educational or testing standards is preferable to the imposition of an apprenticeship requirement, we are not qualified to assess and do not assess the reasonableness of the apprenticeship requirement for architects or the reasonableness of any similar requirement for other professions discussed in this letter.

31/ Regulations of Board of Funeral Services, § 57-11. It is not clear whether this provision is intended to restrict the application of S.C. Code Ann. § 40-19-100(2), which provides for the admission to practice of embalmers and funeral directors licensed by states with "substantially similar requirements" to South Carolina's licensing rules.

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lead to higher prices to consumers and higher incomes for the restricted professional groups. 32/

You should be aware that the FTC's Funeral Industry Practices Rule 33/ imposes certain disclosure requirements on funeral providers in addition to those set forth in South Carolina law. South Carolina law requires funeral providers to state a package price for the casket and other merchandise and services included in a funeral. 34/ This kind of pricing is permissible under the Commission's rule only if it is offered in addition to, and not in lieu of, itemized price information. 35/ In addition, compliance with South Carolina's requirement that the price be posted in the form of "a card or brochure in each casket" 36/ would be insufficient to satisfy the requirement of the Commission's rule that funeral providers furnish to consumers a written casket price list, itemizing 17 specific funeral goods and services, in a form that may be retained by the consumers. 37/

Finally, South Carolina law appears to prohibit persons other than funeral directors from selling funeral merchandise. 38/ For example, it would appear that cemetery operators are prohibited from selling caskets. The FTC's funeral rule, in contrast, seeks to encourage competition in the sale of funeral goods and services by prohibiting funeral providers from conditioning the furnishing of any funeral good or service on the purchase of any other funeral goods or services, except as required by law, and thus allowing persons other than funeral providers to sell funeral goods or services. 39/ A limitation on

32/ See, e.g., Boulrier, Influence of Licensure on Dentists in S. Rottenberg, Occupational Licensure and Regulation 73 (1980); Pashigian, Occupational Licensing and the Interstate Mobility of Professionals, 22 J.L. & Econ. 1 (1979).

33/ 16 C.F.R. Part 453.

34/ S.C. Code Ann. § 40-19-200. South Carolina law requires funeral providers to state the items of individual funeral goods and services only when those items are not offered in a single package.

35/ 16 C.F.R. § 453.2(b)(2) - (6).

36/ S.C. Code Ann. § 40-19-200.

37/ 16 C.F.R. § 453.2(b)(4).

38/ S.C. Code. §§ 40-19-10(2), (3), (7), 40-19-110, 40-19-130.

39/ 16 C.F.R. § 453.4(b).

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the professions that may sell funeral merchandise, by limiting the number of potential sellers, may lead to higher prices to consumers. You may wish to consider whether this requirement serves the interests of South Carolina consumers.

D. Board of Registration for Sanitarians

South Carolina law prohibits registered sanitarians from using solicitors to obtain patronage. 40/ Competition among members of an occupation in the solicitation of business lowers the search costs for consumers who may be interested in procuring the services offered by that occupation. Solicitation is a form of advertising, and restricting it may lead to higher prices. The Commission's staff has studied the effects of restrictions on advertising in the legal profession and found that such restrictions were associated with higher prices to consumers. 41/ You may wish to reevaluate the solicitation restriction in light of the cost it could impose on consumers.

E. Board of Social Work Registration

South Carolina law prohibits social workers from using solicitors to obtain patronage. 42/ For the reasons stated with respect to sanitarians, you may wish to reevaluate the costs and benefits of this restriction.

F. Building Code Council

South Carolina law prohibits local jurisdictions from drafting their own building codes and instead requires them to adopt one of a number of specified model codes. 43/ There is some evidence suggesting that the use of locally-drafted codes, which often favor the interests of local suppliers or trade organizations, may retard the adoption of innovative cost-saving construction methods and may thereby increase the cost of housing. 44/ For this reason, the present statutory requirement

40/ S.C. Code Ann. § 40-61-90(14).

41/ Improving Consumer Access to Legal Services, *supra* note 4.

42/ S.C. Code § 40-63-110(14).

43/ S.C. Code Ann. §§ 6-9-10, 6-9-60. Local jurisdictions may receive permission to modify model codes to local needs upon a showing that the authorized codes do not meet their needs "due to local physical or climatological conditions" S.C. Code Ann. § 6-9-60.

44/ See, e.g., Keating, Standards: Implicit, Explicit and Mandatory, 19 Econ. Inquiry 449 (1981); Field & Ventre, Local (continued...)

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that local jurisdictions use only model building codes may serve the interests of consumers. ^{45/}

Conclusion

We are pleased to have this opportunity to present our views on occupational licensing statutes and regulations adopted by the State of South Carolina. We suggest that the Council may wish to reevaluate the costs and benefits of South Carolina's occupational licensing programs. In particular, you may wish to examine whether the two basic justifications for licensing -- the need to cure a potential informational asymmetry and the need to protect third parties from harm resulting from incompetent professional services -- are applicable to each of the regulatory programs that we have analyzed.

We have also undertaken a review of the specific provisions of the statutes and regulations that you have submitted. Our analysis suggests that certain provisions in those statutes and regulations could have anticompetitive effects. ^{46/} The Council may wish to consider alternatives to these provisions.

Sincerely,


Jeffrey I. Zuckerman
Director

44/ (...continued)
Regulation of Building: Agencies, Codes and Politics in The
Municipal Yearbook (1971).

^{45/} In a recent national survey of 162 cities, staff of the Commission's Bureau of Economics found that only two of the surveyed cities continued to use locally drafted codes. See R. Duke, Local Building Codes and the Use of Cost-Saving Methods (Federal Trade Commission 1989). The use of model codes appears to be part of a national trend even without the compulsion of state law. It is possible, however, that repeal of the statutory requirement that model codes be used could result in the increased use by local jurisdictions of potentially anticompetitive local building codes.

^{46/} The staff has reviewed the statutes and regulations governing nine regulatory agencies. In view of the volume of the materials involved, it is possible that some potentially anticompetitive provisions have escaped our attention. If the Council has questions concerning provisions not discussed in this letter, we encourage you to contact us for further review.